

compliance with the requirements of K.A.R. 28-50-8; or

(C) attaching to each container or wrapped object a label that meets the requirements of applicable federal EPA or OSHA regulations pertaining to the identification of containers or wrapped objects used for the disposal of asbestos-containing materials.

(4) Each waste container shall be carefully handled and transported in order to prevent breaking or opening. Whenever a container breaks or otherwise becomes unable to completely contain the waste, the waste shall be immediately transferred into another sealed container that complies with the requirements of paragraphs (a)(1) and (a)(2) of this regulation. Any friable asbestos-containing solid waste materials that come out of the original container shall be immediately cleaned up after being saturated with water and placed in the replacement container.

(5) Waste shall be transported in vehicles that have completely enclosed cargo areas, or a four-sided cargo area that shall be completely covered with six-mil-thick plastic sheeting or other equivalent covering while the waste is being transported. All visible debris remaining in the vehicle cargo area after the waste has been deposited at the disposal area shall be immediately removed by wet cleaning methods and disposed of in accordance with the requirements of this subsection.

(6) The waste generator shall remain responsible for storage, transport, and disposal of the waste in accordance with this subsection until the time that the waste is delivered to and accepted by the operator of an approved waste disposal site. The waste generator shall be released from further responsibility for handling of the waste when the disposal site operator acknowledges, in writing, that the delivered waste has been properly identified as friable asbestos-containing material and has been delivered in a manner and condition that is acceptable to the disposal site operator.

(b) Wastewater and other liquid waste that contains friable asbestos-containing materials that result from an asbestos-removal project, an asbestos-encapsulation project, or an asbestos-related maintenance, dismantling, or demolition operation may be disposed of by mixing them with solid waste materials and disposing of the mixture in accordance with the requirements of subsection (a) of this regulation. Wastewater that cannot be

handled in this manner shall be disposed of by one of the following methods:

(1) Wastewater from decontamination showers and final cleanup of waste containers and equipment may be disposed of in public sewer systems either by discharge into the plumbing system where the waste is generated or by storing the waste and discharging it directly into the sewer system at a location designated by the operator of the system. The wastewater shall be free of any material that is likely to cause stoppage in the plumbing or sewer systems.

(2) Discharge of any other asbestos-contaminated wastewater or liquid waste or the use of any other method for the disposal of contaminated liquid wastes shall only be at a location and in a manner specifically approved by the department in writing. (Authorized by and implementing K.S.A. 1998 Supp. 65-5303; effective, T-87-1, Jan. 6, 1986; effective May 1, 1987; amended, T-88-54, Dec. 16, 1987; amended May 1, 1988; amended Feb. 4, 1991; amended Oct. 1, 1999.)

#### **Article 51.—HOME HEALTH AGENCY LICENSURE**

#### **28-51-1 to 28-51-99. Reserved.**

**28-51-100. Definitions.** (a) “Administrator” means either a person who has training and experience in health services administration and at least one year of supervisory or administrative experience in health care, or a qualified health professional.

(b) “Admission note” means a dated notation that is written by a professional member of the health team after the initial assessment of a patient and that documents the relevant diagnoses; the patient’s health history; environmental, safety, and social factors of the patient’s home; the patient’s nutritional requirements, medications, and treatments; and the patient’s physical and mental levels of functioning.

(c) “Branch office” means a location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office shall be part of the home health agency and shall be located close to share administration, supervision, and services in a manner that renders it unnecessary for the branch to independently meet the conditions of licensure as a home health agency. Each branch office shall be within 100 miles of the parent agency.

(d) "Bylaws" means a set of rules adopted by a home health agency for governing the agency's operation.

(e) "Clinical record" means a legal document containing facts that meet the following criteria:

(1) Provide a basis for planning and implementing the patient's care program;

(2) indicate the patient's status and response to treatment;

(3) serve as a record of communication for the professional groups responsible for the patient's care; and

(4) serve as a repository of data that can be used to review and evaluate the care provided.

(f) "Dietitian" means a person who is licensed by the Kansas department of health and environment as a dietitian.

(g) "Direct supervision" means that the supervisor is on the facility premises and is accessible for one-on-one consultation, instruction, and assistance, as needed.

(h) "Discharge summary report" means a concise statement, signed by a qualified health professional, reflecting the care, treatment, and response of the patient in accordance with the patient's plan of care and the final disposition at the time of discharge.

(i) "Home health aide" means an individual who has a home health aide certificate issued by the licensing agency as specified in K.A.R. 28-51-113.

(j) "Home health aide trainee" means an individual who meets either of the following:

(1) The individual has completed a 90-hour nurse aide course prescribed in K.A.R. 28-39-165.

(2) The individual's training has been endorsed as specified in K.A.R. 28-51-115.

(k) "Licensed nursing experience" means experience as a registered nurse or licensed practical nurse.

(l) "Licensing agency" means the Kansas department of health and environment.

(m) "Occupational therapist" means a person who is licensed with the Kansas state board of healing arts as an occupational therapist.

(n) "Occupational therapy assistant" means a person who is licensed with the Kansas state board of healing arts as an occupational therapy assistant.

(o) "Parent home health agency" means a home health agency that develops and maintains administrative control of subunits or branch offices, or both.

(p) "Physical therapist" means a person who is licensed with the Kansas state board of healing arts as a physical therapist.

(q) "Physical therapist assistant" means a person who is certified by the Kansas state board of healing arts as a physical therapist assistant.

(r) "Physician" means a person licensed in Kansas or an adjoining state to practice medicine and surgery.

(s) "Plan of care" means a plan based on the patient's diagnosis and the assessment of the patient's immediate and long-range needs and resources. The plan of care is established in consultation with the home health services team. If the plan of care includes procedures and services that, according to professional practice acts, require a physician's authorization, the plan of care shall be signed by a physician and shall be renewed every 62 days.

(t) "Progress note" means a dated, written notation by a member of the home health services team summarizing the facts about the patient's care and response during a given period of time.

(u) "Qualified health professional" means a physician, a registered nurse, a physical therapist, an occupational therapist, a respiratory therapist, a speech therapist, a dietitian, or a social worker.

(v) "Registered nurse" means a person who is licensed by the Kansas state board of nursing as a registered professional nurse.

(w) "Respiratory therapist" means a person who is licensed by the Kansas state board of healing arts as a respiratory therapist.

(x) "Simulated laboratory" means an enclosed area that is in a school, adult care home, or other facility and that is similar to a home setting. In a simulated laboratory, trainees practice and demonstrate basic home health aide skills while an instructor observes and evaluates the trainees.

(y) "Social worker" means a person who is licensed by the Kansas behavioral sciences regulatory board as a social worker.

(z) "Speech therapist" means a person who is licensed by the Kansas department of health and environment as a speech-language pathologist.

(aa) "Summary report" means a concise statement, signed by a qualified health professional, that reflects the care and treatment given and the response by the patient.

(bb) "Supervision" means the authoritative procedural guidance that is given by a qualified health professional. This term shall include initial direction and periodic inspection of the act of accom-

plishing the function or activity. (Authorized by and implementing K.S.A. 65-5109; effective, T-86-23, July 1, 1985; amended May 1, 1987; amended Feb. 28, 1994; amended Dec. 29, 2003; amended Oct. 27, 2006.)

**28-51-101. Licensing procedure.** (a) License application. Each application for an initial home health agency license shall be filed on forms provided by the licensing agency before the agency begins treating patients. A license shall remain in effect unless suspended or revoked by the licensing agency.

(b) Annual report and fees. Each licensed agency shall file an annual report and annual fee upon uniform dates and forms provided by the licensing agency.

(c) Change of administrator. Each licensee shall notify the licensing agency, in writing, within five days following the effective date of a change of administrator. The notification shall include the name, address, and qualifications of the new administrator.

(d) New services. Each licensee shall notify the licensing agency whenever it begins offering a new service covered under these regulations.

(e) Change of address or name. Each licensee shall notify the licensing agency, in writing, within five days following the change of address or name of the home health agency. The home health agency shall forward the previously issued license certificate to the licensing agency with a request for an amended license certificate reflecting the new address.

(f) Change of ownership. Each home health agency involved in a change of ownership shall comply with the provisions of K.S.A. 65-5104(e).

(g) Plan of correction. A license shall be granted if:

(1) The applicant is found to be in substantial compliance with these regulations; and

(2) the applicant submits an acceptable plan for correcting any deficiencies cited.

(h) Annual statistical report. Each home health agency shall submit an annual statistical report. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5103, 65-5104, and 65-5106; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

**28-51-102. License fee.** (a) Each initial license application for an agency shall be accompanied by a fee in the amount of \$100.00.

(b) The annual report for each licensed agency

shall be accompanied by a fee determined in accordance with the following schedule. The visits shall be all those performed by the agency during the calendar year prior to submittal of the annual report.

<i>Visits</i>	<i>Fee</i>
0-500	\$ 25.00
501-1,000	60.00
1,001-2,000	120.00
2,001-3,000	170.00
3,001-4,000	220.00
4,001-5,000	280.00
5,001-6,000	330.00
6,001-7,000	380.00
7,001-8,000	440.00
8,001-10,000	490.00
10,001-20,000	550.00
Over 20,000	580.00

(c) If an agency performs services on an hourly basis, four hours of service shall be considered the equivalent of one visit. All home visits made by county or regional public health department personnel that are public health services, as determined by the secretary of health and environment, shall not be required to be included in the number of visits used to determine the annual fee. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5103; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

**28-51-103. Organization and administration.** (a) Governing body. Each home health agency shall have a governing body or a clearly defined body having legal authority to operate the agency. The governing body shall:

(1) Have bylaws or their equivalent which shall be renewed annually;

(2) employ a qualified administrator as defined in K.A.R. 28-51-100(a);

(3) adopt, revise, and approve procedures for the operation and administration of the agency as needed;

(4) provide the name and address of each officer, director, and owner of the agency to the licensing agency;

(5) disclose corporate ownership interests of 10 percent or more to the licensing agency; and

(6) disclose past home health agency ownership or management, including the name of the agency, its location, and current status, to the licensing agency.

(b) Administrator. The administrator shall be responsible for the management of the agency to

the extent authority is delegated by the governing body. A qualified person shall be designated to act in the absence of the administrator. The administrator shall have at least the following responsibilities:

(1) Organize and direct the agency's ongoing functions;

(2) act as a liaison between the governing body and staff;

(3) employ qualified personnel in accordance with job descriptions;

(4) provide written personnel policies and job descriptions that are made available to all employees;

(5) maintain appropriate personnel records, administrative records, and all policies and procedures of the agency;

(6) provide orientation for new staff, regularly scheduled inservice education programs, and opportunities for continuing education of the staff;

(7) ensure the completion, maintenance, and submission of such reports and records as required by the secretary of health and environment; and

(8) ensure that each patient admitted to the home health agency receives, in writing, the patient's bill of rights listed at K.A.R. 28-51-111.

(c) Personnel records. Current personnel records shall be maintained for each employee. The personnel records for an employee shall include:

(1) The title of that employee's position and a description of the duties and functions assigned to that position;

(2) the qualifications for the position;

(3) evidence of licensure or certification if required;

(4) performance evaluations made within six months of employment and annually thereafter;

(5) documentation of reference checks and a personal interview prior to employment; and

(6) evidence of good general health and a negative tuberculin skin test or chest X-ray upon employment. Subsequent periodic health assessments or physical examinations shall be given in accordance with agency policies.

(d) Personnel under hourly or per visit contracts. There shall be a written contract between the agency and personnel under hourly or per visit arrangements. The contract shall include the following provisions:

(1) A statement that patients are accepted for care only by the primary home health agency;

(2) a description of the services to be provided;

(3) a statement that each employee shall conform to all applicable agency policies, including those related to qualifications;

(4) a statement that the employee shall be responsible for participating in the development of plans of care;

(5) a description of the manner in which services will be controlled, coordinated, and evaluated by the primary agency;

(6) the procedures for submitting clinical and progress notes, scheduling patient care, and conducting periodic patient evaluations; and

(7) the procedures for determining charges and reimbursement.

(e) Abuse, neglect, or exploitation. Each employee of the agency shall be responsible for reporting in accordance with agency policies and K.S.A. 39-1430 et. seq., and amendments thereto, any evidence of abuse, neglect, or exploitation of any patient served by the agency. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5104; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

**28-51-104. Home health services.** (a) General provisions. Each home health agency shall accept a patient only when the agency reasonably expects that the patient's medical, rehabilitation, and social needs can be met adequately by the agency in the patient's place of residence.

(b) Provision of services.

(1) Patient care shall follow a written plan which is periodically reviewed by the supervising nurses or other appropriate health professionals.

(2) All personnel providing services to the same patient shall maintain a liaison with the supervising professional to assure that their efforts effectively complement one another and support the objectives as outlined in the plan of care.

(3) For each patient receiving professional services, including the services of a registered nurse, physical therapy, occupational therapy, speech therapy, and dietary consultation, a written summary report shall be sent to the attending physician every 62 days. Services under arrangement with another agency shall be subject to a written contract conforming to these requirements.

(4) A registered nurse shall be available or on call to the staff during all hours that nursing or home health aide services are provided.

(c) Supervision of home health aide services.

(1) A physician, a registered nurse, or an ap-



appropriate qualified health professional shall visit each patient's home every two weeks to supervise home health aide services when skilled nursing or other therapy services, or both are also being furnished to a patient.

(2) This visit may be made less often if only home health aide services are being furnished to a patient and this is documented in the clinical record. A supervisory visit shall then be made at least every 60 days. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5104; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

**28-51-105. Nursing services.** (a) Nursing services shall be provided under the supervision of a registered nurse and in accordance with a plan of care.

(b) A registered nurse shall make an initial evaluation visit to each patient, shall regularly reevaluate the patient's nursing needs, and shall initiate the patient's plan of care and make any necessary revisions. (Authorized by K.S.A. 1984 Supp. 65-5109, as amended by 1985 H.B. 2468; implementing K.S.A. 1984 Supp. 65-5104, as amended by 1985 H.B. 2468; effective, T-86-23, July 1, 1985; effective May 1, 1986.)

**28-51-106. Therapy services.** (a) Therapy services offered directly or under arrangement shall be provided by the following:

- (1) A physical therapist;
- (2) A physical therapist assistant functioning under the supervision of a physical therapist;
- (3) An occupational therapist;
- (4) An occupational therapist assistant functioning under the supervision of an occupational therapist;

- (5) A speech therapist; or
- (6) A respiratory therapist.

(b) The therapist shall make an evaluation visit to each patient requiring services, shall regularly reevaluate the patient's therapy needs, and shall initiate the patient's therapy plan of care and make any necessary revisions. (Authorized by K.S.A. 1984 Supp. 65-5109, as amended by 1985 H.B. 2468; implementing K.S.A. 1984 Supp. 65-5104, as amended by 1985 H.B. 2468; effective, T-86-23, July 1, 1985; effective May 1, 1986.)

**28-51-107. Social services.** (a) Services shall be given by a social worker according to the patient's plan of care.

(b) The social worker shall participate in the

development of the patient's plan of care. (Authorized by K.S.A. 1984 Supp. 65-5109, as amended by 1985 H.B. 2468; implementing K.S.A. 1984 Supp. 65-5104, as amended by 1985 H.B. 2468; effective, T-86-23, July 1, 1985; effective May 1, 1986.)

**28-51-108. Home health aide services.** Each home health aide shall be supervised by a registered nurse and shall be given written instructions for patient care prepared by a qualified health professional. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5101; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended March 12, 1990; amended Feb. 28, 1994; amended Dec. 29, 2003.)

**28-51-109. Nutritional and dietary consultation.** (a) Nutritional and dietary consultation services offered directly or under arrangement shall be given in accordance with the written plan of care.

(b) If nutritional services are provided, a dietitian shall evaluate the nutritional needs of each patient requiring such services and shall participate in developing the plan of care for that patient. (Authorized by K.S.A. 1984 Supp. 65-5109, as amended by 1985 H.B. 2468; implementing K.S.A. 1984 Supp. 65-5104, as amended by 1985 H.B. 2468; effective, T-86-23, July 1, 1985; effective May 1, 1986.)

**28-51-110. Clinical records.** (a) General provisions. A clinical record containing pertinent past and current findings shall be maintained in accordance with accepted professional standards for each patient receiving home health services.

(b) Content of record. Each patient's clinical record shall contain at least the following:

- (1) The patient's plan of care;
- (2) the name of the patient's physician;
- (3) drug, dietary, treatment, and activity orders;
- (4) signed and dated admission and clinical notes that are written the day the service is rendered and incorporated at least weekly;
- (5) copies of summary reports sent to the physician;
- (6) copies of progress notes; and
- (7) the discharge summary.

(c) Retention. Clinical records shall be retained in a retrievable form for at least five years after the date of the last discharge of the patient.

If the home health agency discontinues operation, provision shall be made for retention of records.

(d) Safeguard against loss or unauthorized use. Written policies and procedures shall be developed regarding use and removal of records and the conditions for release of information. The patient's or guardian's written consent shall be required for release of information not required by law. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5104; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

**28-51-111. Patients' bill of rights.** The governing body shall establish a bill of rights that will be equally applicable to all patients. At a minimum, the following provisions shall be included in the patients' bill of rights.

(a) Each patient shall have the right to choose care providers and the right to communicate with those providers.

(b) Each patient shall have the right to participate in planning of the patient's care and the right to appropriate instruction and education regarding the plan.

(c) Each patient shall have a right to request information about the patient's diagnosis, prognosis, and treatment, including alternatives to care and risks involved, in terms that the patient and the patient's family can readily understand so that they can give their informed consent.

(d) Each patient shall have the right to refuse home health care and to be informed of possible health consequences of this action.

(e) Each patient shall have the right to care that is given without discrimination as to race, color, creed, sex, or national origin.

(f) Each patient shall be admitted for service only if the agency has the ability to provide safe, professional care at the level of intensity needed.

(g) Each patient shall have the right to reasonable continuity of care.

(h) Each patient shall have the right to be advised in advance of the disciplines that will furnish care and the frequency of visits proposed to be furnished.

(i) Each patient shall have the right to be advised in advance of any change in the plan of care before the change is made.

(j) Each patient shall have the right to confidentiality of all records, communications, and personal information.

(k) Each patient shall have the right to review

all health records pertaining to them unless it is medically contraindicated in the clinical record by the physician.

(l) Each patient denied service for any reason shall have the right to be referred elsewhere.

(m) Each patient shall have the right to voice grievances and suggest changes in services or staff without fear of reprisal or discrimination.

(n) Each patient shall have the right to be fully informed of agency policies and charges for services, including eligibility for, and the extent of payment from third-party reimbursement sources, prior to receiving care. Each patient shall be informed of the extent to which payment may be required from the patient.

(o) Each patient shall have the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.

(p) Each patient shall have the right to have his or her property treated with respect.

(q) Each patient shall have the right to be advised in writing of the availability of the licensing agency's toll-free complaint telephone number. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5104; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994.)

**28-51-112. Home health aide training program.** (a) Each individual employed or contracted by a home health agency who is not licensed or registered to provide home health services but who assists, under supervision, in the provision of home health services and who provides related health care to patients shall meet the training requirements in K.A.R. 28-51-113 through K.A.R. 28-51-116.

(b) This regulation shall not apply to any individual providing only attendant care services as defined in K.S.A. 65-6201, and amendments thereto. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective, T-86-23, July 1, 1985; effective May 1, 1986; amended Feb. 28, 1994; amended Oct. 27, 2006.)

**28-51-113. Home health aide training program.** (a) Each home health aide candidate shall be a Kansas-certified nurse aide in good standing on the public nurse aide registry and complete a 20-hour home health aide course approved by the licensing agency.

(b) Upon completing a home health aide course as specified in subsection (a) of this regulation, each home health aide shall be required to pass a state test as specified in K.A.R. 28-51-116.

(c) Each person who completes the requirements specified in subsections (a) and (b) of this regulation shall be issued a home health aide certificate by the licensing agency and shall be listed on the public nurse aide registry.

(d) (1) Each home health aide trainee shall be allowed to provide home health aide services to clients of the home health agency under the supervision of a registered nurse.

(2) Each home health aide trainee who completes an approved 20-hour course shall be issued a home health aide certificate by the licensing agency, upon completion of the requirements specified in subsections (a) and (b) of this regulation, within 90 days from the beginning date of the initial course in order to continue employment providing home health aide services. Home health aide trainee status shall be for one 90-day period only.

(3) Any Kansas certified nurse aide who is eligible for employment and who is enrolled in a 20-hour home health aide course may work for a home health agency as a home health aide trainee. The home health agency's registered nurse shall retain in the trainee's personnel file a department-approved form attesting that the trainee has met the minimum competencies for a home health aide trainee.

(e) Each 20-hour home health aide course shall be administered according to the following criteria:

(1) Any person issued a nurse aide certificate by the licensing agency or enrolled in a 90-hour nurse aide course as specified in K.A.R. 28-39-165 may enroll in a 20-hour home health aide course after being prescreened and tested for reading comprehension at an eighth-grade level.

(2) Each 20-hour course shall be sponsored by one of the following:

(A) A home health agency;

(B) a postsecondary school under the jurisdiction of the state board of regents; or

(C) a postsecondary school accredited by the north central association of colleges and schools.

(3) A home health agency shall not sponsor or provide clinical instruction for a 20-hour home health aide course if that home health agency meets any of the conditions listed in 42 C.F.R. 484.36(a)(2)(i), as in effect on October 1, 2001, which is hereby adopted by reference.

(4) Each 20-hour course shall be prepared and administered in accordance with the guidelines established by the licensing agency in the "Kansas

certified home health aide guidelines (20 hours)," dated July 1, 2005, and the "Kansas home health aide sponsor and instructor manual," excluding the appendices, dated July 1, 2005, which are hereby adopted by reference

(f) No correspondence course shall be accepted as a 20-hour home health aide course.

(g) Distance-learning educational offerings and computer-based educational offerings shall meet the requirements specified in subsection (e) of this regulation. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Dec. 29, 2003; amended Oct. 27, 2006.)

**28-51-114. Home health aide course instructors.** (a) Each instructor for the 20-hour course shall meet the following requirements:

(1) Each person who intends to be a course instructor shall submit a completed instructor approval application form to the licensing agency at least three weeks before offering an initial course and shall be required to receive approval as an instructor before the first day of an initial course.

(2) Each instructor shall be a registered nurse with a minimum of two years of licensed nursing experience, including at least 1,750 hours of experience in the provision of home health care services.

(b) Each instructor and course sponsor shall be responsible for ensuring that the following requirements are met:

(1) Each student in a 20-hour home health aide course shall be prescreened and tested for reading comprehension of the written English language at an eighth-grade reading level before enrolling in the course.

(2) A completed course approval application form shall be submitted to the licensing agency at least three weeks before offering the course. Approval of the course shall be obtained from the licensing agency at the beginning of each course whether the course is being offered initially or after a previous approval. Each change in course location, schedule, or instructor shall require prior approval by the licensing agency.

(3) All course objectives shall be accomplished.

(4) Health care professionals with appropriate skills and knowledge may be selected to conduct any part of the training. Each health care professional shall have at least one year of experience in the subject area in which the individual is providing training.

(5) Each person providing a portion of the

training shall do so under the direct supervision of the instructor.

(6) If clinical instruction is included in the course, each student shall be under the direct supervision of the instructor.

(7) During the clinical instruction, the instructor shall perform no other duties than the provision of direct supervision to the students.

(8) The 20-hour home health aide course shall be prepared and administered in accordance with the guidelines in the "Kansas certified home health aide guidelines (20 hours)" and the "Kansas home health aide sponsor and instructor manual," as adopted in K.A.R. 28-51-113.

(c) Any instructor or course sponsor who does not fulfill the requirements of this regulation may be subject to withdrawal of approval to serve as a course instructor or a course sponsor. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Dec. 29, 2003; amended Oct. 27, 2006.)

**28-51-115. Allied health training endorsement for home health aide.** (a) Each person who meets one of the following conditions shall be deemed to have met the requirements of K.A.R. 28-51-113(a) and shall be eligible to take the state test as specified in K.A.R. 28-51-116:

(1) The person has been licensed in Kansas or another state, within 24 months from the date of application, as a licensed practical nurse whose license is inactive or a registered nurse whose license is inactive, and there are no pending or current disciplinary actions against the individual's license.

(2) The person is currently licensed in Kansas or another state, or has been licensed within 24 months from the date of application, as a licensed mental health technician, and there are no pending or current disciplinary actions against the individual's license.

(3) The person has received training from an accredited nursing or mental health technician training program within the 24-month period before applying for endorsement. Training shall have included a basic skills component comprised of personal hygiene, nutrition and feeding, safe transfer and ambulation techniques, normal range of motion and positioning, and supervised clinical experience in geriatrics.

(b) Each person qualified under subsection (a) of this regulation shall receive written notice from the licensing agency that the person is eligible to take the state test. Upon receiving written ap-

proval from the licensing agency, that person may be employed by a home health agency as a home health aide trainee to provide patient care on behalf of the home health agency. Each person employed as a home health aide trainee shall be certified as a home health aide by the licensing agency, upon successful completion of the requirements specified in K.A.R. 28-51-113(a) or subsection (a) of this regulation, within one 90-day period starting from the date of approval, in order to continue employment providing home health aide services on behalf of the home health agency. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Dec. 29, 2003; amended Oct. 27, 2006.)

**28-51-116. State home health aide test eligibility.** (a) Each person shall have a maximum of three attempts per year from the beginning date of the course to pass the state written test after successfully completing an approved 20-hour course pursuant to K.A.R. 28-51-113.

(1) If the person does not pass the state test within one year from the starting date of taking an approved 20-hour course, the person shall retake the entire course to be eligible to retake the state test.

(2) If a person whose training has been endorsed as specified in K.A.R. 28-51-115 does not pass the state test on the first attempt, the person shall complete an approved 20-hour course as specified in K.A.R. 28-51-113 before retaking the state test.

(3) The state test shall be comprised of 30 multiple-choice questions for persons who have successfully completed an approved 20-hour course or have successfully completed training that has been endorsed as specified in K.A.R. 28-51-115. A score of 22 or higher shall constitute a passing score.

(b) Each home health aide trainee shall pay a nonrefundable application fee of \$20.00 before taking the state test. A nonrefundable test application fee shall be required each time the test is scheduled to be taken. Each person who fails to take the state test and who has made payment for the test shall submit another fee before being scheduled for another opportunity to take the test.

(c) Each course instructor shall collect the application fee for each home health aide trainee eligible to take the state test and shall submit the fees, class roster, and application forms to the licensing agency or its designated agent.



(d) Each person who is eligible to take the state test and who has submitted the application fee and application form shall be issued written approval, which shall be proof of eligibility to sit for the test.

(e) Any reasonable test accommodation or auxiliary aid to address a disability may be requested by any person who is eligible to take the state test.

(1) A request for reasonable accommodation or auxiliary aid shall be submitted each time a candidate is scheduled to take the test.

(2) No test shall be given orally or by a sign language interpreter since reading and writing instructions or directions is an essential job task of a home health aide.

(3) Each person requesting a test accommodation shall submit an accommodation request form along with an application form to the instructor. The instructor shall forward these forms to the licensing agency or its designated agent at least three weeks before the desired test date. Each instructor shall verify the need for the accommodation by signing the accommodation request form.

(f) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability with regard to accommodations. An extended testing period of up to one additional hour may be offered to persons with limited English proficiency. (Authorized by K.S.A. 65-5109; implementing K.S.A. 65-5115; effective Dec. 29, 2003; amended Oct. 27, 2006.)

## **Article 52.—MEDICAL CARE FACILITIES**

**28-52-1. General requirements.** (a) Each medical care facility shall establish a written plan for risk management and patient care quality assessment on a facility-wide basis.

(b) The plan shall be approved and reviewed annually by the facility's governing body.

(c) Findings, conclusions, recommendations, actions taken, and results of actions taken shall be documented and reported through procedures established within the risk management plan.

(d) All patient services including those services provided by outside contractors or consultants shall be periodically reviewed and evaluated in accordance with the plan.

(e) Plan format. Each submitted plan shall include the following:

(1) Section I—a description of the system implemented by the facility for investigation and analysis of the frequency and causes of reportable incidents within the facility;

(2) Section II—a description of the measures used by the facility to minimize the occurrence of reportable incidents and the resulting injuries within the facility;

(3) Section III—a description of the facility's implementation of a reporting system based upon the duty of all health care providers staffing the facility and all agents and employees of the facility directly involved in the delivery of health care services to report reportable incidents to the chief of the medical staff, chief administrative officer, or risk manager of the facility;

(4) Section IV, organization—a description of the organizational elements of the plan including:

(A) Name and address of the facility;

(B) name and title of the facility's risk manager;

(C) description of involvement and organizational structure of medical staff as related to risk management program, including names and titles of medical staff members involved in investigation and review of reportable incidents;

(D) organizational chart indicating position of the facility's review committee as defined in K.S.A. 65-4923 and L. 1986, Ch. 229, New Section 4(a)(2); and

(E) mechanism for ensuring quarterly reporting of incident reports to proper licensing agency.

(5) Section V—a description of the facility's resources allocated to implement the plan; and

(6) Section VI—documentation that the plan as submitted has been approved by the facility's governing body.

(f) Plan submittal. On and after November 1, 1986, each medical care facility shall submit the plan to the department at least 60 days prior to the license renewal date. After an initial plan is approved, any amendments to the plan shall be submitted to the department.

(g) Departmental review. Upon review of the facility's risk management plan or any amendments the department shall notify the facility in writing if the plan of amendments have been approved or disapproved. The written notification will specify the reason for disapproval.

(h) Revised plan. Within 60 days of the date the facility receives notification the plan has been disapproved, the facility shall submit a revised plan to the department.

(i) Plan publication. The plan shall be dissem-

inated to personnel in accordance with the plan. (Authorized by and implementing L. 1986, Chapter 229, Sec. 3; effective, T-87-50, Dec. 19, 1986; effective May 1, 1987.)

**28-52-2. Incident reporting.** (a) Each medical care facility shall identify a written form on which employees and health care providers shall report clinical care concerns to the risk manager, chief of staff, or administrator. The original or complete copy of the incident report shall be sent directly to the risk manager, chief of staff, or administrator, as authorized in the facility's risk management plan.

(b) The risk manager, chief of staff, or administrator shall acknowledge the receipt of each incident report in writing. This acknowledgment may be made in the following manner:

- (1) file stamping each report;
- (2) maintaining a chronological risk management reporting log;
- (3) signing or initialing each report in a consistent fashion; or
- (4) entering pertinent information into a computer database.

(c) Incident reports, investigational tools, minutes of risk management committees, and other documentation of clinical analysis for each reported incident shall be maintained by the facility for not less than one year following completion of the investigation. (Authorized by and implementing K.S.A. 65-4922; effective Feb. 27, 1998.)

**28-52-3. Risk management committee.**

(a) Each medical care facility shall designate one or more executive committees responsible for making and documenting standard-of-care determinations with respect to each incident report, pursuant to K.A.R. 28-52-2. The jurisdiction of each risk management committee shall be clearly delineated in the facility's risk management plan, as approved by the facility's governing body.

(b) The activities of each risk management committee shall be documented in its minutes at least quarterly, and this documentation shall demonstrate that the committee is exercising overall responsibility for standard-of-care determinations delegated by the committee to individual clinical reviewers and subordinate committees. (Authorized by and implementing K.S.A. 65-4922; effective Feb. 27, 1998.)

**28-52-4. Standard-of-care determina-**

**tions.** (a) Each facility shall assure that analysis of patient care incidents complies with the definition of a "reportable incident" set forth at K.S.A. 65-4921. Each facility shall use categories to record its analysis of each incident, and those categories shall be in substantially the following form:

- (1) Standards of care met;
- (2) standards of care not met, but with no reasonable probability of causing injury;
- (3) standards of care not met, with injury occurring or reasonably probable; or
- (4) possible grounds for disciplinary action by the appropriate licensing agency.

(b) Each reported incident shall be assigned an appropriate standard-of-care determination under the jurisdiction of a designated risk management committee. Separate standard-of-care determinations shall be made for each involved provider and each clinical issue reasonably presented by the facts. Any incident determined by the designated risk management committee to meet category (a)(3) or (a)(4) shall be considered a "reportable incident" and reported to the appropriate licensing agency in accordance with K.S.A. 65-4923.

(c) Each standard-of-care determination shall be dated and signed by an appropriately credentialed clinician authorized to review patient care incidents on behalf of the designated committee. In those cases in which documented primary review by individual clinicians or subordinate committees does not occur, standard-of-care determinations shall be documented in the minutes of the designated committee on a case-specific basis. Standard-of-care determinations made by individual clinicians and subordinate committees shall be approved by the designated risk management committee on at least a statistical basis. (Authorized by and implementing K.S.A. 65-4922; effective Feb. 27, 1998.)

**Article 53.—CHARITABLE HEALTH CARE PROVIDERS**

**28-53-1. Definitions.**

(a) "Agreement" means a written understanding between the department and a charitable health care provider regarding the rendering of professional services to medically indigent persons.

(b) "Department" means the Kansas department of health and environment.

(c) "Federally qualified health center" means a center which meets the requirements for federal

funding under 42 USC section 1396d(1) of the public health service act, and which has been designated as a “federally qualified health center” by the federal government.

(d) “Indigent health care clinic” means an outpatient medical care clinic designed to provide care to the medically indigent under the medical direction of a qualified person licensed to practice medicine and surgery and licensed by the Kansas board of healing arts.

(e) “Local health department” means county, city-county and multi-county public health units established under the authority of K.S.A. 65-201.

(f) “Secretary” means the secretary of the Kansas department of health and environment. (Authorized by and implementing K.S.A. 1991 Supp. 75-6120; effective April 1, 1991; amended July 13, 1992.)

**28-53-2. Agreement.** (a) Each person applying for an agreement shall submit a completed application to the department on forms prescribed by the secretary.

(b) An agreement may be terminated by the secretary or the charitable provider with 30 days advanced written notice to the department. Failure of the provider to maintain proper licensure by the appropriate professional licensing agency shall constitute immediate cancellation of the agreement. (Authorized by and implementing K.S.A. 1991 Supp. 75-6120; effective April 1, 1991; amended July 13, 1992.)

**28-53-3. Eligibility criteria for medically indigent.** Persons shall qualify as medically indigent if they are:

(a) determined to be a member of a family unit earning at or below 200% of poverty income guidelines based on the annual update of “poverty income guidelines” published in the federal register by the United States department of health and human services;

(b) not indemnified against costs arising from medical and hospital care by a policy of accident and sickness insurance, an employee health benefits plan, a program administered by the state or federal government, or any such coverage; and

(c) seek health care at:

- (1) an indigent health care clinic;
- (2) a federally qualified health center; or
- (3) a participating local health department.

(Authorized by and implementing L. 1990, Ch. 329, sec. 1; effective April 1, 1991.)

**28-53-4. Records and reports.** (a) Charitable health care providers shall ensure that the clinics through which they provide care shall:

(1) maintain completed forms prescribed by the secretary and signed by the patient which certify that the individual receiving care pursuant to an agreement is medically indigent; and

(2) submit completed quarterly activity reports to the department on forms prescribed by the secretary.

(b) Failure to comply with the requirements of this section shall be grounds for cancellation of the agreement. (Authorized by and implementing L. 1990, Ch. 329, sec. 1; effective April 1, 1991.)

**28-53-5. Referrals.** Medically indigent persons may receive professional services from health care providers in other locations upon referral from a federally qualified health center, an indigent health care clinic, or a participating local health department. Any such referrals shall be reflected in the records of the referring entity. (Authorized by and implementing L. 1990, Ch. 329, sec. 1; effective April 1, 1991.)

## Article 54.—TRAUMA SYSTEM PROGRAM

**28-54-1. Definitions.** Each of the following terms used in this article shall have the meaning specified in this regulation:

(a) “ACS” means American college of surgeons.

(b) “Department” means the Kansas department of health and environment.

(c) “Designation” means a determination by the secretary that a hospital shall provide the trauma care required of a level I trauma center, level II trauma center, or level III trauma center.

(d) “Level I trauma center” means a hospital that has the capability to provide the highest level of trauma care for every aspect of injury, from prevention through rehabilitation.

(e) “Level II trauma center” means a hospital that meets the following conditions:

(1) Provides initial trauma care, regardless of the severity of the injury;

(2) is not necessarily able to provide the same comprehensive care as that provided by a level I trauma center; and

(3) does not have trauma research as a primary objective.

(f) “Level III trauma center” means a hospital that provides initial trauma care or arranges for the appropriate transfer of trauma patients to a level I trauma center or a level II trauma center.

(g) “Regional trauma council” means one of the six councils in the state established to address trauma and emergency medical care issues within a specific geographic area and to coordinate services to meet the needs of trauma patients injured within that area.

(h) “Trauma” means any of the following:

(1) Any injury to a person that results from acute exposure to mechanical, thermal, electrical, or chemical energy;

(2) any injury to a person that is caused by the absence of heat or oxygen and that requires immediate medical intervention; or

(3) any injury to a person that requires surgical intervention or treatment to prevent death or permanent disability.

(i) “Trauma facility” means a hospital distinguished by the availability of surgeons, physician specialists, anesthesiology services, nurses, and resuscitation and life-support equipment on a 24-hour basis to care for persons with trauma. This term shall include the following:

(1) Level I trauma centers;

(2) level II trauma centers; and

(3) level III trauma centers.

(j) “Trauma registry” means the database maintained and operated by the department to collect and analyze reportable patient data on the incidence, severity, and causes of trauma.

(k) “Verification” means the process by which the American college of surgeons confirms a hospital’s trauma care capability and performance. (Authorized by K.S.A. 2006 Supp. 75-5665; implementing K.S.A. 2006 Supp. 75-5665 and K.S.A. 2006 Supp. 75-5666; effective Nov. 2, 2007.)

**28-54-2. Standards for designation.** The designation of a hospital as a level I trauma center, level II trauma center, or level III trauma center shall be made by the secretary based on the capability of the hospital to meet the requirements of the requested designation, as specified in this regulation:

(a) For level I trauma centers and level II trauma centers, verification by the American college of surgeons that the hospital meets the standards specified in the “resources for optimal care of the injured patient: 2006” or a determination by the secretary that the hospital meets equivalent standards; and

(b) for level III trauma centers, the “Kansas trauma care facility categorization criteria for level III trauma centers,” published by the Kansas

trauma program and the advisory committee on trauma and dated April 6, 2007, which is adopted by reference. (Authorized by and implementing K.S.A. 2006 Supp. 75-5665; effective Nov. 2, 2007.)

**28-54-3. Application for designation.**

(a)(1) Each hospital administrator that seeks a certificate of designation for its hospital shall submit the following to the secretary:

(A) A designation application on a form provided by the department, which shall include one of the following:

(i) A copy of the applicant’s current ACS verification certificate; or

(ii) documentation of successful completion of the secretary’s on-site survey; and

(B) a nonrefundable application fee of \$500.

(2) An application shall not be deemed complete until all of the required materials have been received. Each applicant shall be notified by the department of the completeness of the application within 30 days after the application is submitted to the department.

(b) Any applicant seeking designation of its hospital as a level III trauma center may request an on-site survey from the department by submitting a request with the application. The applicant shall be notified by the department of the date on which the on-site survey is scheduled and the amount of the nonrefundable fee for the on-site survey, which shall not exceed \$15,000. The applicant shall submit this fee at least 30 days before the date of the on-site survey.

(c) The findings of the on-site survey team shall be provided to each applicant within 60 calendar days after the date of each survey. If a hospital does not meet the requirements for the level of designation for which the hospital administrator has applied, the hospital administrator shall be notified of the requirements that the hospital is required to meet for designation at the requested level. The hospital administrator shall submit to the secretary a plan of the proposed actions that the hospital will take to ensure compliance with the requirements. A second survey may be required by the secretary. The secretary’s survey team shall make a recommendation for the designation to the secretary, based on the hospital’s capability to meet the criteria for the requested level of designation.

(d) Each applicant specified in subsection (c) shall be notified by the secretary about the status



of designation as a trauma facility within 90 days after the applicant's last survey.

(e) Each applicant who submits a current ACS one-year or three-year verification certificate with an application and the required fee shall be notified by the secretary about the status of designation as a trauma facility within 30 days after these required materials are submitted to the secretary.

(f) Each certificate of designation shall be valid from the date of issuance and for the period of time specified on the certificate. (Authorized by and implementing K.S.A. 2006 Supp. 75-5665; effective Nov. 2, 2007.)

**28-54-4. Application for change of designation.** (a) Any administrator of a designated trauma facility may request a change of designation by submitting the following to the secretary:

(1) An application for a change of designation on the form provided by the department, which shall include one of the following:

(A) A copy of the applicant's current ACS verification certificate for the level of designation sought; or

(B) documentation of successful completion of the secretary's on-site survey for the level of designation sought. The applicant may request an on-site survey from the department by submitting a request with the application; and

(2) the nonrefundable fee of \$500.

An application shall not be deemed complete until all of the required materials have been received. Each applicant shall be notified by the department of the completeness of the application within 30 days after the application is submitted to the department.

(b) If the applicant seeking designation of its hospital as a level III trauma center requests an on-site survey by the department, the applicant shall be notified by the department of the date on which the on-site survey is scheduled and the amount of the nonrefundable fee for the on-site survey, which shall not exceed \$15,000. The applicant shall submit this fee at least 30 days before the date of the on-site survey.

(c) The findings of the secretary's on-site survey team shall be provided to the applicant within 60 calendar days after the date of the survey. The survey team shall make a recommendation for the designation to the secretary, based on the hospital's capability to meet the criteria for the requested level of designation.

(d) Each applicant specified in subsection (c)

shall be notified by the secretary about the status of designation as a trauma facility within 90 days after the applicant's on-site survey.

(e) Each applicant who submits a current ACS one-year or three-year verification certificate for the level of designation sought with an application and the required fee shall be notified by the secretary about the status of designation as a trauma facility within 30 days after these required materials are submitted to the secretary.

(f) Each change of designation certificate shall be valid from the date of issuance and for the period specified on the certificate. (Authorized by and implementing K.S.A. 2006 Supp. 75-5665; effective Nov. 2, 2007.)

**28-54-5. Certificate of designation; renewal.** (a) Each certificate of designation shall be valid for three years from the effective date specified on the certificate.

(b) (1) Each administrator of a designated trauma facility that wants to renew the trauma facility's certificate of designation shall submit the following at least six months before the expiration date specified on the certificate of designation:

(A) An application for renewal of the hospital's designation on a form provided by the department, which shall include one of the following:

(i) A copy of the applicant's current ACS verification certificate; or

(ii) documentation of successful completion of the secretary's on-site survey. If an applicant for renewal wants to request an on-site survey from the department, the applicant shall meet the requirements specified in K.A.R. 28-54-3 (b) and (c); and

(B) a nonrefundable renewal fee of \$500.

(2) An application shall not be deemed complete until all of the required materials have been received. Each applicant for renewal shall be notified by the department of the completeness of the application within 30 days after the application is submitted to the department. Except as otherwise provided in subsection (c), failure to renew the certificate of designation before the expiration date shall render the certificate invalid.

(c) The certificate of designation shall not expire on the specified expiration date if all of the required materials specified in paragraph (b)(1) have been submitted to the secretary at least six months before the expiration date on the certificate of designation. In this case, the certificate of

designation shall expire on the earlier of the following dates:

(1) The date on which the certificate of designation is renewed; or

(2) the date on which the secretary denies the renewal application. (Authorized by and implementing K.S.A. 2006 Supp. 75-5665; effective Nov. 2, 2007.)

**28-54-6. Voluntary termination of certificate of designation.** (a) Each administrator of a trauma facility that decides not to maintain the trauma facility's certificate of designation shall notify the secretary in writing of that decision.

(b) The notification shall include the anticipated date of termination, which shall be at least 60 days after the date on which the notice is mailed, and shall describe the procedures by which the administrator will notify the medical care service providers in the regional trauma council in which the trauma facility is located. (Authorized by and implementing K.S.A. 2006 Supp. 75-5665; effective Nov. 2, 2007.)

**28-54-7. Misrepresentation of certificate of designation.** (a) The certificate of designation shall apply only to the hospital for which the administrator submitted the designation application and shall not extend to any of the hospital's satellite facilities or affiliates.

(b) No hospital administrator shall represent that the hospital is a trauma facility unless the hospital has a current certificate of designation or certificate of verification by the American college of surgeons. (Authorized by and implementing K.S.A. 2006 Supp. 75-5665; effective Nov. 2, 2007.)

## **Article 55.—PCB FACILITY CONSTRUCTION PERMIT STANDARDS AND REGULATIONS**

### **28-55-1. Applicability and definitions.**

(a) Substances that are regulated by these regulations include dielectric fluids, contaminated solvents, oils, waste oils, heat transfer fluids, hydraulic fluids, paints, sludges, slurries, dredge spoils, soils, materials contaminated as a result of spills, and any other chemical substances or combination of substances which contain a total PCB concentration of 50 parts per million (ppm) or more.

(b) "Material or substantial alteration or addition" means an increase in storage, treatment or disposal capacity by a factor of 50 percent or an

increase in facility investment by a factor of 50 percent excluding inflation.

(c) "Minor permit modification" means any modification which does not expand or enlarge a facility beyond the boundaries established by an existing permit and is not a material or substantial alteration or addition. (Authorized by and implementing K.S.A. 65-3481 as enacted by L. 1986, Ch. 226, Sec. 2; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987.)

### **28-55-2. PCB facility construction permit application.**

(a) New facility application. After July 1, 1986 all applications to construct a PCB facility, which does not have an existing permit from the secretary, shall provide information which documents compliance with K.A.R. 28-55-5 and includes a business concern disclosure statement. The business concern disclosure statement shall include the following information: the name of the corporation, past corporate names, the place or places of incorporation, the names of officers, the names of former officers and directors, partnership or joint venture information, ownership and debt liability, subsidiaries and stock holdings, employee data, experience and credentials, licenses and permits, environmental violations history, environmental judgements and litigation, and criminal proceedings. This information shall be submitted on forms provided by the department.

(b) Permit modification application. An expansion, enlargement or modification of a facility beyond the specified areas indicated in the existing permit constitutes a new proposal for which a new construction permit application is required.

(c) Minor permit modifications. Minor modifications to permitted PCB facilities shall not require submittal of an amended permit application. The permittee shall submit a written notice to the department describing the modifications and all data justifying the designation as a minor permit modification. Upon written approval from the department the permittee may initiate the modification. Minor permit modifications are not required to meet the public notice, hearing and inspection procedures specified in K.A.R. 28-55-3(b), (c) and (g). (Authorized by and implementing K.S.A. 65-3481 as enacted by L. 1986, Ch. 226, Sec. 2; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987.)

### **28-55-3. Procedures for review of polychlorinated biphenyl (PCB) facility permit**

**applications.** (a) Approval or denial of permit application. When an application to construct or modify a PCB facility is complete, a draft permit shall be prepared by the secretary or the application shall be denied by the secretary.

(1) If the secretary denies the permit application, the applicant shall receive a written notification from the secretary stating the reasons for denial.

(2) If the secretary decides to prepare a draft permit, the draft permit shall contain all conditions and requirements necessary for construction or modification of the facility. The permit may include any special conditions or procedures that the applicant shall meet or follow to be in compliance with these or other state or federal regulations.

(b) Public notice and public comment period. After the secretary completes the draft permit, a public notice shall be prepared by the secretary. The public notice shall be published in a daily or weekly local newspaper of general circulation and the Kansas Register. The public notice shall contain the following information:

(1) Name and address of the agency processing the permit application;

(2) name and address of the permittee or permit applicant;

(3) a brief description of the PCB treatment, storage, or disposal facility;

(4) name, address, and telephone number of a person from whom any interested persons may obtain further information, including copies of the draft permit; and

(5) date, time, and place of the public hearing, including a brief description of the nature and purpose of the hearing.

(c) Public hearings.

(1) The notice of the public hearing shall be published at least 60 days before the hearing.

(2) The public hearing shall be conducted at a location near the facility.

(3) A hearing officer shall be designated by the secretary.

(4) Any person may submit oral or written comments and data concerning the draft permit application. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

(5) A tape recording or written transcript of the hearing shall be made available to the public upon request.

(6) A report to the secretary shall be submitted

by the hearing officer. The report shall include all written and oral comments submitted during the public comment period. The report may also recommend findings and determinations.

(d) Approval or denial of the draft permit. After the close of the public comment period, a decision to approve or deny the draft permit shall be made by the secretary.

(1) If the secretary denies the draft permit, a written notification of the reasons for denial shall be provided to the applicant by the secretary.

(2) The applicant and each person who has submitted written comments shall be notified of the decision by the secretary.

(3) Notice of the final decision shall be published in the Kansas Register.

(e) Monitoring required. As a condition for issuing the permit, the permittee may be required by the secretary to install and operate an approved environmental quality monitoring system. Approval of the monitoring system shall be based on the following factors used to measure environmental quality:

(1) The location of groundwater monitoring wells, air monitoring stations, and other required sampling points;

(2) plans and specifications for the construction of the monitoring systems;

(3) the constituents being monitored and their concentration limits;

(4) frequency of sampling; and

(5) analyses to be performed.

(f) Notation on the deed. Within 60 days of receiving a permit, the owner or operator shall record, in accordance with state law, a notation with the county register of deeds where the property is located that the land has been used to treat, store, or dispose of PCB, and that copies of all permits are available at the offices of the department.

(g) Final inspection of construction. Upon completing construction of the facility or modifications to the facility, the permittee shall notify the secretary in writing. An inspection of the facility to assure that construction was completed in accordance with the approved permit application and permit shall be conducted by the department. The permittee shall not begin operation until the secretary approves of the construction in writing. (Authorized by and implementing K.S.A. 65-3481; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987; amended March 22, 2002.)

**28-55-4. Modification or transfer of permits.** (a) Modification of permits. The department may, at any time, modify a permit or any term or condition of a permit to include the following:

- (1) Special conditions required to comply with the requirements of these regulations;
- (2) conditions to avoid hazards to public health or the environment;
- (3) conditions to abate a public nuisance; or
- (4) modifications proposed by the permittee and approved by the department.

Modifications to the permit shall follow the public notice, and hearing procedures contained in K.A.R. 28-55-3(b) and (c).

(b) Transfer of permits. Before any assignment, sale, conveyance, or transfer of all or any part of the property upon which a PCB facility is located, and before any change in the responsibility for operation of a facility is made, the permittee shall notify the department, in writing, of the intent to transfer title or operating responsibility, at least 30 days in advance of the date of transfer. The person to whom transfer is made shall submit a disclosure statement as required by K.A.R. 28-55-2(a) and any other information required by the secretary. If no reason exists to deny the permit, the secretary shall issue a permit to the new permittee. (Authorized by and implementing K.S.A. 65-3481 as enacted by L. 1986, Ch. 226, Sec. 2; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987.)

**28-55-5. Standards for PCB facilities.** Each PCB treatment, storage, and disposal facility shall comply with all applicable requirements of 40 CFR part 761, subpart D, as in effect on July 1, 2000 and 40 CFR part 264, subparts B, C, D, G, and H, as in effect on July 1, 2000, which are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-3481; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987; amended March 22, 2002.)

## Articles 56 to 58.—RESERVED

### Article 59.—DIETITIANS

**28-59-1. Application for a license or temporary license.** (a) Each applicant for a license or temporary license shall submit a completed, department-approved application form and any requested supporting documentation to

the department, together with the appropriate fee specified in K.A.R. 28-59-7.

(b) Each applicant for a license or temporary license shall provide the department with the applicant's academic transcripts and proof of receipt of a baccalaureate or postbaccalaureate degree. These documents shall be provided directly to the department by the academic institution.

(c) A temporary license may be issued for either of the following purposes:

(1) The applicant's completion of the examination specified in K.A.R. 28-59-4; or

(2) the applicant's accrual of continuing education credits required to reinstate a lapsed license.

(d) Each applicant for renewal of a temporary license shall submit a letter to the secretary requesting the renewal and describing why the applicant has failed to obtain a license in the last six months and what measures are being taken to secure a license, together with the temporary license renewal fee specified in K.A.R. 28-59-7. (Authorized by K.S.A. 65-5904; implementing K.S.A. 65-5906 and 65-5907; effective Feb. 18, 1991; amended March 16, 2001.)

**28-59-2. Application for a person licensed in another state.** (a) Each applicant who is presently or has been previously licensed in another state shall submit a completed, department-approved application form with the license fee specified in K.A.R. 28-59-7.

(b) Each applicant shall meet current requirements for licensure in Kansas. The requirements of one of the states that issued a license to the applicant shall be at least equal to Kansas licensure requirements at the time the applicant seeks a Kansas license.

(c) Each applicant shall be in good standing with each licensing agency that has issued a license to the applicant.

(d) "Good standing" means both of the following:

(1) The applicant's license is not under any administrative proceeding.

(2) The applicant's license is not under any disciplinary action. (Authorized by K.S.A. 65-5904; implementing K.S.A. 65-5910; effective Feb. 18, 1991; amended March 16, 2001.)

**28-59-3. Educational and experience requirements.** (a) To determine whether an applicant has complied with the requirement that the person has received a baccalaureate or post-



baccalaureate degree pursuant to K.S.A. 65-5906, and amendments thereto, consideration shall be given to whether the course of study is accredited or approved by the American dietetic association or is deemed equivalent by the secretary.

(b) Each applicant who has received a baccalaureate or postbaccalaureate degree outside the United States or its territories and whose transcript is not in English shall submit an officially translated English copy of the applicant's transcript and, if necessary, supporting documents. The transcript shall be translated by a source and in a manner that are acceptable to the secretary. Each applicant shall pay any transcription fee directly to the transcriber.

(c) Each applicant who has received a baccalaureate or postbaccalaureate degree outside of the United States and its territories shall obtain an equivalency validation from an agency that is approved by the secretary and that specializes in educational credential evaluations. Each applicant shall pay the required equivalency validation fee directly to the validation agency.

(d) Each applicant who received a baccalaureate or postbaccalaureate degree and whose course of study was not from an American dietetic association accredited or approved program shall obtain an equivalency validation from a college or university accredited or approved dietetics program approved by the secretary.

(e) To determine whether an applicant has complied with the requirement that a person complete 900 clock hours of dietetic experience pursuant to K.S.A. 65-5906, and amendments thereto, consideration shall be given to whether or not the supervised experience is acquired through an American dietetic association approved or accredited program for dietitians or is deemed its equivalent by the secretary.

(f) Each applicant who did not receive the supervised experience from an American dietetic association accredited or approved program shall obtain an equivalency validation from a college or university accredited or approved dietetics program approved by the secretary.

(g) Each applicant shall submit the necessary documentation for an equivalency validation to be made. Each equivalency validation evaluation and corresponding documentation shall be sent directly to the department by the agency providing the validation. After consideration of the evaluation and documentation, the applicant shall be notified in writing of the decision of the secretary.

(h) "American dietetic association" means the national professional association that accredits or approves educational programs and supervised experience programs in dietetics. (Authorized by K.S.A. 65-5904; implementing K.S.A. 65-5905 and 65-5906; effective Feb. 18, 1991; amended March 16, 2001.)

**28-59-4. Examination requirement.** The following shall be the procedures for the examination of applicants:

(a) Each applicant for a license shall pass an examination for dietitians approved by the secretary. The minimum passing score for the examination shall be 25.

(b) Each applicant shall have successfully completed a course of study and supervised experience pursuant to K.S.A. 65-5906, and amendments thereto, before submitting an application to sit for the examination.

(c) Each applicant shall pay the required examination fee directly to the testing agency. (Authorized by K.S.A. 65-5904; implementing K.S.A. 65-5906; effective Feb. 18, 1991; amended March 16, 2001.)

**28-59-5. License renewal.** This regulation shall not apply to temporary licenses. (a) Each applicant for renewal of a license shall submit a completed, secretary-approved application form and any requested supporting documentation with the license renewal fee specified in K.A.R. 28-59-7.

(b) Each applicant for renewal of a license shall have completed 15 clock-hours of documented and approved continuing education during each renewal period. Approved continuing education clock-hours completed in excess of the 15-hour requirement shall not be carried over to the subsequent renewal period. "One clock-hour" shall mean at least 50 minutes of direct instruction, exclusive of registration, breaks, and meals.

(c) Each application for renewal of a license shall be filed on or before the last day of February of the calendar year in which the license expires. Licenses shall be renewable biennially, with the day of expiration being the last day of February of the applicable year.

(d) "Sponsorship" means an approved, long-term sponsoring of programs for the purpose of fulfilling renewal or reinstatement continuing education requirements. Each approved sponsor shall be accountable for upholding the standards in place for the approval of continuing education programs under the authority of the secretary.

Each sponsor shall make application and fulfill requirements as prescribed on secretary-approved forms. Failure to comply with sponsorship requirements shall result in one or more of the following actions or additional requirements by the secretary:

- (1) Supplementary documentation;
- (2) program restrictions; or
- (3) temporary or permanent suspension of long-term sponsorship approval.

(e) (1) Continuing education may be accrued from any of the following:

- (A) Academic courses;
- (B) workshops, seminars, video conferences, internet-based seminars, journal club meetings, or poster sessions, which are also called poster displays;
- (C) self-directed study materials;
- (D) presentations;
- (E) food exhibits;
- (F) publication of a journal article or book; or
- (G) initial certification in any of the following programs:

(i) Certified nutrition support dietitian (CNSD) with the American association of diabetes educators/American nurses credentialing center (AADE/ANCC);

(ii) certified nutrition support dietitian (CNSD) with the American association of parenteral and enteral nutrition (ASPEN);

(iii) certification as a specialist in pediatric nutrition by the commission on dietetic registration (CDR);

(iv) certification as a specialist in renal nutrition by the commission on dietetic registration (CDR);

(v) certification as a lactation consultant by the international board of lactation consultant examiners (IBLCE);

(vi) certified diabetes instructor with the national certification board for diabetes educators (NCBDE); or

(vii) certified diabetes educator with the American association of diabetes educators (AADE).

(2) Academic courses shall be from a regionally accredited college or university.

(3) Self-study materials may include audio tapes, study kits, internet-based offerings, journal articles, DVDs, and videotapes. Journal articles shall include articles published in the "journal of the ADA" or "today's dietitian" or by a dietetic practice group. Any applicant may submit a maximum of seven journal articles for continuing education credit for each licensure period.

(f) The content and objective of the continuing education activity shall be primarily related to the practice of dietetics pursuant to K.S.A. 65-5902, and amendments thereto. The purpose of the educational activity shall be the furthering of the applicant's education and shall not be a part of the applicant's job responsibilities. In-service shall be considered to be part of the applicant's job responsibilities.

(g) (1) Approval for a continuing education activity may be obtained by either of the following methods:

(A) The instructor or sponsor of a single-offering continuing education activity submitting information and documentation on forms approved by the secretary before the activity's occurrence; or

(B) the applicant submitting information and documentation on forms approved by the secretary requesting approval for an activity before the program date.

(2) An organization, institution, agency, or individual shall be qualified for approval as a long-term sponsor of continuing education activities if, after review of the application, the secretary determines that the applicant agrees to perform all of the following:

(A) Present organized programs of learning;

(B) present subject matter that integrally relates to the practice of dietetics;

(C) approve and present program activities that contribute to the professional competency of the licensee; and

(D) sponsor program presenters who are individuals with education, training, or experience qualifying them to present the subject matter of the programs.

(h) All continuing education sponsors that received approval as specified in paragraph (g)(2) shall provide a certificate of attendance to each licensee who attends a continuing education activity. This certificate shall state the following:

(1) The sponsor's name and approval number;

(2) the date of the program;

(3) the name of the participant;

(4) the total number of clock-hours of the approved activity attended, excluding introductions, registration, breaks, and meals;

(5) the activity title and its presenter;

(6) the location; and

(7) an indication of whether or not the activity has been approved for dietetics continuing education.

(i) Assignment of clock-hours to approved continuing education activities shall be determined by the following criteria:

(1) One academic-semester credit hour course shall be equivalent to 15 clock-hours of continuing education. One academic-trimester credit hour course shall be equivalent to 14 clock-hours of continuing education. One academic-quarter credit hour course shall be equivalent to 10 clock-hours of continuing education.

(2) One academic-semester credit hour course audited shall be equivalent to eight clock-hours of continuing education. One academic-trimester credit hour course audited shall be equivalent to seven clock-hours of continuing education. One academic-quarter credit hour course audited shall be equivalent to five clock-hours of continuing education.

(3) One clock-hour of contact between a presentation instructor and the applicant shall be equivalent to one clock-hour of continuing education for the applicant.

(A) Contact time shall be rounded down to the nearest one-half hour.

(B) The presenting instructor may be given two clock-hours of continuing education for every one clock-hour of contact between the instructor and the attendees for each first-time preparation and presentation of a new workshop, seminar, or poster session.

(C) If the presentation was presented by more than one instructor, the continuing education clock-hours shall be prorated among the instructors.

(4) One clock-hour of time required to complete the self-directed study material, as specified by the sponsor of the material, shall be equivalent to one clock-hour of continuing education. The criteria for approving self-directed study shall include the following:

(A) Contact time shall be rounded down to the nearest one-half hour.

(B) Each applicant shall provide validation of actual completion of the material.

(C) A maximum of 10 clock-hours shall be awarded for self-directed study material for each licensure period.

(5) One clock-hour shall be awarded for attendance at food exhibits upon verification of six poster sessions or six vendors at each exhibit. The licensee shall provide documentation of at least six vendor contacts for each food exhibit. A maximum

of two clock-hours for attendance at food exhibits shall be awarded for each licensure period.

(6) Five clock-hours shall be awarded for the initial publication of an article in a peer-reviewed journal or a chapter of a book. Ten clock-hours shall be awarded for the initial publication of a book. Documentation of publication shall include a copy of any of the following:

(A) Each article published in a peer-reviewed journal;

(B) each chapter published in a book; or

(C) the title page, the page containing the copyright and copyright date, and the table of contents for each book.

(7) Fifteen clock-hours shall be awarded upon attainment of certification in each program as specified in paragraph (e)(1)(G).

(j) Each applicant shall maintain individual records of information and documentation on approved continuing education hours. If the licensee's application is selected for an audit, the licensee shall submit verification of these records to the secretary as part of the license renewal application.

(k) Each licensee whose initial licensure period is less than 24 months shall be required to obtain at least one-half hour of continuing education for each month in the initial licensure period. (Authorized by and implementing K.S.A. 65-5904 and K.S.A. 65-5909; effective Feb. 18, 1991; amended Sept. 26, 1994; amended March 16, 2001; amended April 25, 2008.)

#### **28-59-5a. Reinstatement of license.**

Each applicant for reinstatement of a license shall meet the following criteria:

(a) Submit an application on department-approved forms accompanied by the appropriate fee specified in K.A.R. 28-59-7; and

(b) document and verify the accumulation of not less than 15 hours of approved continuing education as specified in K.A.R. 28-59-5 for the previous complete or partial licensure period. The required hours of approved continuing education shall have been accumulated within the past two calendar years before the date of application for reinstatement. (Authorized by and implementing K.S.A. 65-5904 and K.S.A. 1999 Supp. 65-5909; effective Sept. 26, 1994; amended March 16, 2001.)

**28-59-6. Unprofessional conduct.** Any of the following acts shall be evidence of unprofes-

sional conduct of a licensee, temporary licensee, or applicant:

(a) Misrepresenting any professional qualifications or credentials;

(b) promoting or endorsing products in a manner that is misleading or false;

(c) making false or misleading claims about the efficacy of any dietetic services;

(d) permitting the use of one's name or credentials for the purpose of certifying that dietetic services have been rendered when the licensee or applicant has not provided or supervised the provision of the services;

(e) failing to maintain the knowledge and skills required for continuing professional competence;

(f) failing to exercise appropriate supervision over persons if there is a supervisory relationship;

(g) impersonating another person who is licensed;

(h) knowingly allowing another person to use one's license;

(i) assisting another person to obtain a license under false pretense;

(j) failing to report to the department alleged violations of K.S.A. 65-5901, et seq., and amendments thereto, and article 59 of these regulations;

(k) failing to notify the department of any disciplinary action or limitation, restriction, or revocation of an individual's license, or of termination or suspension of employment in a dietetic practice for some form of misfeasance, malfeasance, or nonfeasance;

(l) refusing to cooperate in a timely manner with the department's investigation of complaints lodged against a licensee, temporary licensee, or applicant;

(m) acquiring or providing a commission or rebate or any other form of remuneration for referral to any other service or for the use of any services;

(n) failing to disclose to a client any interest in commercial enterprises that the licensee, temporary licensee, or applicant promotes for the purpose of personal gain or profit;

(o) using undue influence on a client, including the promotion of the sales of services and products in a manner that exploits the client for financial gain or personal gratification;

(p) failing to provide prospective clients with information, including obligation for fee payment and financial arrangements, that might affect the client's decision to enter into the relationship;

(q) misrepresenting professional competency

by performing or offering to perform services that are clearly unwarranted on the basis of education, training, or experience; or

(r) failing to conform to generally accepted principles and standards of dietetic practice, which shall be those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by professional or governmental bodies. (Authorized by and implementing K.S.A. 1999 Supp. 65-5911(a)(2); effective Feb. 18, 1991; amended March 16, 2001.)

**28-59-7. Fees.** (a) The license application fee shall be \$140.00. The license application fee for an initial licensure period of less than 24 months shall be prorated at \$5.50 per month for any full or partial month, until the last day of February of the calendar year that is not less than 12 months and not more than 24 months from the date of application.

(b) The license renewal fee shall be \$135.00.

(c) The license renewal late fee shall be \$50.00.

(d) The temporary license application fee shall be \$70.00.

(e) The temporary license renewal fee shall be \$70.00.

(f) The application fee for reinstatement of a lapsed or revoked license shall be \$100.00 in addition to the license renewal fee established in subsection (b) of this regulation.

(g) The wall or wallet card license replacement fee shall be \$10.00.

(h) The sponsorship application fee shall be \$150.00. (Authorized by and implementing K.S.A. 1999 Supp. 65-5913; effective Feb. 18, 1991; amended Dec. 7, 1992; amended Sept. 26, 1994; amended March 16, 2001.)

**28-59-8. Change of name or address.** (a) Each licensee shall notify the department of any changes in name or mailing address within 15 days of these changes.

(b) Notification of address changes shall be made directly to the department and shall include the name, old mailing address, new mailing address, and zip code.

(c) Within 90 days of the notification of name change, the following shall be received by the department:

(1) A copy of a marriage certificate, the court decree evidencing the change, or a social security card reflecting the new name; and

(2) payment of the applicable fee specified in



K.A.R. 28-59-7 if a new wallet card is requested. In addition, the previously issued identification card shall be returned to the department. (Authorized by and implementing K.S.A. 65-5904; effective Feb. 18, 1991; amended March 16, 2001.)

#### Article 60.—CREDENTIALING PROGRAM

**28-60-1. Definitions.** (a) “Applicant” means the department or organizations who submit to the department of health and environment a notice of intent and a credentialing application requesting that a specific profession or occupation be credentialed. The organization or organizations need not be comprised of members of the specific profession or occupation that is the subject of the credentialing application.

(b) “Manual for applicant” means the “Kansas credentialing review program: manual for applicants,” which is produced by the department of health and environment and includes descriptions of the process, policies, procedures, and standards of the credentialing review program as established by K.S.A. 1987 Supp. 65-5001, as amended by L. 1988, Ch. 246, Sec. 22, *et seq.* and amendments thereto and K.A.R. 28-60-1, *et seq.*

(c) “Profession or occupation” means the specific vocation that is the subject of the credentialing application.

(d) “Record” means the evidence and testimony gathered during the technical committee meetings and the secretary’s review of the credentialing application. The record shall include but not be limited to the following:

- (1) The application;
- (2) the minutes of the technical committee meetings;
- (3) the written materials, written testimony, and oral testimony presented in accordance with K.A.R. 28-60-6(c) at the technical committee meetings;
- (4) the preliminary and final report of the findings and recommendations of the technical committee; and
- (5) the secretary’s final report to the legislature.

(e) “Standards” means the conditions set by the secretary, as listed in the May 1987 manual for applicants, that the technical committee and secretary may use to aid in determining whether certain portions of the criteria have been met. (Authorized by and implementing K.S.A. 1987 Supp. 65-5009; effective May 1, 1987; amended,

T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

**28-60-2. Notice of intent.** (a) Each applicant seeking to have a credentialing application reviewed, according to the provisions of K.S.A. 1987 Supp. 65-5001, *et seq.*, as amended by L. 1988, Ch. 246, Sec. 22, and amendments thereto, shall first submit to the secretary a notice of intent.

(b) Each notice of intent shall contain the following information regarding the applicant:

- (1) The names of the organizations and the number of members in each organization;
- (2) the names of the national organizations, if the organizations are state affiliates of national organizations; and
- (3) the names, addresses, organization affiliations, and telephone numbers of the persons designated to represent the applicant.

(c) Each notice of intent shall contain the following information regarding the profession or occupation that the applicant is seeking to have credentialed:

- (1) Each name and title of the profession or occupation;
- (2) the approximate number of members of the profession or occupation practicing in Kansas;
- (3) the titles, addresses, and telephone numbers of all other organizations in Kansas consisting of members of the profession or occupation;
- (4) a list and description of each function typically performed by members of the profession or occupation that pertain to services rendered directly or indirectly for the purpose of:

(A) Preventing physical, mental, or emotional illness;

(B) detecting, diagnosing, and treating illness;

(C) facilitating recovery from illness; and

(D) providing rehabilitative or continuing care following illness;

(5) the approximate percentage of time spent in each function listed in paragraphs (4), (A), (B), (C) and (D) of this subsection;

(6) the training, education, or experience required to perform the functions of the profession or occupation;

(7) the titles of all other health professions or occupations that:

(A) Perform the same type of functions as the profession or occupation, but at a different level of skill or training;

(B) perform different, but related, functions in association with the profession or occupation; and

(C) perform the same functions as the profession or occupation, but in a different setting or employment situation;

(8) a description of the relationship between the other health professions or occupations identified in paragraphs (7)(A), (B), and (C) of this subsection and the profession or occupation; and

(9) an approximate date on which a credentialing application will be submitted.

(d) Any additional information needed to make a determination as to whether the profession or occupation is properly classified as health care personnel may be requested by the secretary.

(e) A determination as to whether the profession or occupation meets the definition of health care personnel shall be made by the secretary on the basis of the contents of the notice of intent and any additional information requested by the secretary.

(f) Each notice of intent shall be approved or denied by the secretary within 60 days after receiving the notice of intent and any additional information requested, and the applicant shall be given written notice of the decision.

(1) If the secretary approves any notice of intent, the applicant may submit a credentialing application; and

(2) if the secretary denies any notice of intent, the applicant may appeal the secretary's decision.

(g) Any applicant may appeal to the secretary in writing within 60 days after receiving the written denial notification by the secretary.

(h) Each appeal to the secretary shall specify in detail the reasons the applicant disagrees with the decision.

(i) If, after examining the applicant's written appeal, the secretary finds the profession or occupation meets the definition of health care personnel, the applicant may submit a credentialing application to the secretary.

(j) If the secretary finds the profession or occupation does not meet the definition of health care personnel and after exhausting the review procedures outlined in the Kansas judicial review act, the applicant shall not submit a credentialing application to the secretary.

(k) Each applicant shall be given written notice of the final decision by the secretary. (Authorized by K.S.A. 1987 Supp. 65-5009(b); implementing K.S.A. 1987 Supp. 65-5001, as amended by L. 1988, Ch. 246, Sec. 22, effective May 1, 1987;

amended, T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

**28-60-3. Filing of the credentialing application.** (a) Each applicant shall complete the forms of the credentialing application that are printed in the manual for applicants.

(b) "Kansas resident" means any person 18 years old or older who resides in Kansas.

(c) Each credentialing application received from an applicant whose notice of intent has been approved shall be reviewed by the department of health and environment to determine if the credentialing application is fully answered and complete.

(1) If the credentialing application is not complete, the applicant shall be requested by the department of health and environment to submit additional information.

(2) If the credentialing application is complete, an approximate date for the technical committee to begin the review of the credentialing application shall be selected by the secretary and the applicant shall be notified of the approximate date. (Authorized by K.S.A. 1987 Supp. 65-5009(b); implementing K.S.A. 1987 Supp. 65-5002; effective May 1, 1987; amended, T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

**28-60-4. Withdrawing a credentialing application.** (a) Each applicant that has withdrawn a credentialing application shall not submit a new notice of intent, application, and application fee for one year after the date the final report of the technical committee has been issued.

(b) The technical committee shall prepare a final report within 120 days after completing the technical committee meetings in accordance with K.A.R. 28-60-6.

(c) Each credentialing application already on file shall be reviewed by the technical committee before a new credentialing application submitted by an applicant group that has previously withdrawn a credentialing application will be reviewed. (Authorized by 1987 Supp. 65-5009(b); implementing K.S.A. 1987 Supp. 65-5003; effective May 1, 1987; amended, T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

**28-60-5. Selection of a technical committee.** (a) A written memorandum requesting nominations for individuals to serve on each tech-

nical committee shall be distributed by the secretary to:

(1) Persons who have asked the department of health and environment to keep them informed of credentialing activities; and

(2) various professional associations and state regulatory boards.

(b) The memorandum shall contain:

(1) A request for nominations;

(2) the names of the professions or occupations of the applications the technical committee will review;

(3) the review schedules;

(4) a description of the review process and responsibilities of the technical committee members; and

(5) instructions and a closure date for submission of nominations.

(c) Additional information shall be requested by the secretary from each nominee to determine whether the nominee has any direct, economic or personal interest in the credentialing or noncredentialing of the professions or occupations whose credentialing applications will be reviewed by the technical committee.

(d) Each nominee shall remain on the list of nominees for one year.

(e) Additional technical committees may be established if approved by the secretary.

(f) Each technical committee shall review only one credentialing application at a time. Each technical committee shall review a maximum of two applications. (Authorized by K.S.A. 1987 Supp. 65-5009(b); implementing K.S.A. 1987 Supp. 65-5003; effective May 1, 1987; amended, T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

**28-60-6. Technical committee meetings.** (a) Each credentialing application shall be reviewed by a technical committee under the following sequential proceedings:

(1) Applicant review. A copy of each application shall be mailed by the department of health and environment to the technical committee members at least 30 days before the applicant review meeting. Each applicant shall present, in person, an overview and description of the profession or occupation and shall summarize the contents of the credentialing application. The applicant's response to each question in the credentialing application shall be discussed by the technical committee at this meeting. The committee

may ask for clarification or additional information from the applicant.

(2) Analysis. Any information requested at the applicant review meeting by the technical committee that has not been previously accepted may be submitted by the applicant. The information gathered from the application and applicant review meeting shall be compared with the criteria and standards, and then prepared as a report by the department of health and environment. At the analysis meeting, the technical committee shall discuss the report and shall develop preliminary findings and recommendations as to whether the criteria have been met.

(3) Public hearing. At the public hearing meeting, both supporting and opposing comments and information about the application and the preliminary findings and recommendations of the technical committee may be presented by the public. Any information requested at the applicant review meeting and analysis meeting by the technical committee that has not been previously accepted may be submitted by the public and the applicant. No new information shall be accepted or considered by the technical committee after the public hearing meeting.

(4) Final findings and recommendations. At the final findings and recommendations meeting, information presented at the public hearing and the information contained in the record to date shall be discussed by the technical committee. The final findings and recommendations as to whether the criteria have been met shall then be developed by the technical committee.

(b) Additional technical committee meetings may be held if approved by the technical committee chairperson.

(c) The rules of conduct for public hearings shall include the following:

(1) Information presented at the technical committee meetings shall be in the record and shall not be presented again at public hearing meeting.

(2) Materials already entered into the record from the technical committee meetings shall be available for inspection at the public hearing meeting.

(3) Each person interested in presenting oral testimony shall contact the department of health and environment to be placed on the appropriate public hearing meeting agenda.

(4) The technical committee chairperson shall determine the amount of time allotted for each

oral presentation based on the number of speakers and the anticipated length of time of the public hearing.

(5) At the conclusion of the agenda, the technical committee chairperson may allow time for:

(A) Persons to testify who were not previously on the agenda; and

(B) the applicant to provide any additional comments.

(6) Each person who presents oral testimony shall provide a written copy of the testimony for insertion into the record at or within seven days after the public hearing.

(7) Any technical committee member may ask questions and request further information or documentation of anyone testifying or providing information during the technical committee meetings.

(8) Written testimony may be submitted in lieu of oral testimony.

(9) Written testimony shall be submitted to the department of health and environment prior to the public hearing or at the public hearing and shall be entered into the record of the public hearing.

(d) "Criteria" means the conditions established by K.S.A. 1987 Supp. 65-5006, and amendments thereto, and K.S.A. 1987 Supp. 65-5007, and amendments thereto. Each application shall meet the conditions in K.S.A. 1987 Supp. 65-5006, and amendments thereto, before credentialing may be recommended by the technical committee and secretary. (Authorized by K.S.A. 1987 Supp. 65-5009(b); implementing K.S.A. 1987 Supp. 65-5003; effective May 1, 1987; amended, T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

**28-60-7.** (Authorized by 1987 Supp. 65-5009(b); implementing K.S.A. 1987 Supp. 65-5003; effective May 1, 1987; amended T-88-36, Sept. 17, 1987; amended May 1, 1988; revoked Dec. 5, 1988.)

**28-60-8.** (Authorized by K.S.A. 65-5009(b), as amended by L. 1986, Ch. 246, Sec. 8; implementing K.S.A. 65-5004, as amended by L. 1986, Ch. 246, Sec. 4; effective May 1, 1987; revoked, T-88-36, Sept. 17, 1987; revoked May 1, 1988.)

**28-60-9.** The standards listed in the "Kansas credentialing review program manual for applicants," May 1987, pages 9-12, as jointly developed by the secretary and the statewide health

coordinating council, and as in effect May 1, 1987, is hereby adopted by reference. (Authorized by and implementing K.S.A. 1987 Supp. 65-5009(b); effective T-88-36, Sept. 17, 1987; amended May 1, 1988; amended Dec. 5, 1988.)

## **Article 61.—LICENSURE OF SPEECH LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS**

**28-61-1. Definitions.** (a) "American speech-language-hearing association" means the national professional association that accredits academic and clinical practicum programs and continuing education sponsors in speech-language pathology and audiology and that issues a certificate of clinical competence in speech-language pathology and audiology.

(b) "Department" means the Kansas department of health and environment.

(c) "Licensure period" means the period of time beginning on the date a license is issued and ending on the date the license expires. All full licenses shall expire biennially on October 31.

(d) "Sponsorship" means an approved, long-term sponsoring of programs for the purpose of fulfilling renewal or reinstatement continuing education requirements. Each approved sponsor shall be accountable for upholding the department's standards for the approval of continuing education programs. Each sponsor shall make application and submit the annual report on department-approved forms. The authority to sanction or otherwise discipline an approved sponsor shall be maintained by the department. These sanctions may include the following:

(1) Supplementary documentation;

(2) program restrictions; or

(3) temporary or permanent suspension of long-term sponsorship approval.

(e) "Supervision of methods and procedures related to hearing and the screening of hearing disorders" means consultation on at least a monthly basis by a licensed audiologist, a licensed speech-language pathologist, or any person exempted by K.S.A. 65-6511 (a), (b), or (c), and amendments thereto. Any consultation may include any of the following:

(1) On-site visits;

(2) review of written documentation and reports; or

(3) conference calls. (Authorized by K.S.A. 65-6503; implementing K.S.A. 65-6501 and K.S.A.



65-6503; effective Dec. 28, 1992; amended March 16, 2001; amended Aug. 19, 2005.)

**28-61-2. Qualifications for licensure.** (a) To determine whether or not an applicant has received at least a master's degree and completed a supervised clinical practicum in the area for which the applicant seeks licensure pursuant to K.S.A. 65-6505, and amendments thereto, consideration shall be given to whether or not the academic course of study and practicum content are accredited by the American speech-language-hearing association or are deemed equivalent to the course of study and practicum content of Kansas universities by the secretary.

(b) Each applicant who received at least a master's degree or completed a supervised clinical practicum, or both, from a program not accredited by the American speech-language-hearing association shall obtain an equivalency validation of the academic course of study or practicum content, or both, from a Kansas college or university with a speech-language pathology or audiology program accredited by the American speech-language-hearing association.

(c) To determine whether or not an applicant has complied with the requirement that the degree be from an educational institution with standards consistent with the standards of Kansas universities pursuant to K.S.A. 65-6505, and amendments thereto, consideration shall be given to whether or not the institution is accredited by an accrediting body recognized by either the council on postsecondary accreditation or the secretary of the U.S. department of education, or is deemed equivalent by the secretary.

(d) Each applicant who received at least a master's degree outside the United States or its territories and whose transcript is not in English shall submit an officially translated English copy of the applicant's transcript and, if necessary, supporting documents. The transcript shall be translated by a source and in a manner that are acceptable to the secretary.

(e) Each applicant who received at least a master's degree outside the United States or its territories shall obtain an equivalency validation from an agency approved by the secretary that specializes in educational credential evaluations.

(f) Each applicant shall pay any transcription or equivalency validation fee directly to the transcriber or the validating agency.

(g) The supervised clinical practicum as speci-

fied in K.S.A. 65-6505, and amendments thereto, shall be at least 375 hours, at least 250 of which shall be earned at the graduate level in the area in which licensure is sought.

(h) Each applicant, after completing the requirements in K.S.A. 65-6505, and amendments thereto, shall successfully complete the supervised postgraduate professional experience requirement in the area for which the applicant seeks licensure. The applicant may complete the requirement on a full-time or part-time basis.

(1) "Full-time" means 30 hours per week for nine months.

(2) "Part-time" means 15 to 19 hours per week for 18 months, 20 to 24 hours per week for 15 months, or 25 to 29 hours per week for 12 months.

(3) Each applicant working full-time shall spend 80 percent of the week in direct client contact and activities related to client management.

(4) Each applicant working part-time shall spend 100 percent of the week in direct client contact and activities related to client management.

(5) "Direct client contact" means assessment, diagnosis, evaluation, screening, habilitation, or rehabilitation of persons with speech, language, or hearing handicaps.

(6) Each postgraduate professional experience supervisor shall be currently and fully licensed in Kansas for speech-language pathology or audiology or, if the experience was completed in another state, either be currently and fully licensed in that state or hold the certificate of clinical competence issued by the American speech-language-hearing association. The supervisor's license or certificate shall be in the area for which the applicant seeks licensure.

(7) The supervisor shall evaluate the applicant on no less than 36 occasions of monitoring activities with a minimum of four hours per month. At least 18 on-site observations with a minimum of two hours per month shall be made by the supervisor.

(8) Monitoring occasions may include on-site observations, conferences in person or on the telephone, evaluation of written reports, evaluations by professional colleagues, or correspondence.

(9) The supervisor shall maintain careful written records of all contacts and conferences during this period. If the supervisor determines that the applicant is not providing satisfactory services at any time during the period, the supervisor shall inform the applicant in writing and make written

reports to the applicant during the period of resolution.

(10) No licensee shall be approved to serve as a supervisor for a postgraduate professional experience once the secretary initiates a disciplinary proceeding pursuant to K.S.A. 65-6508, and amendments thereto. After the disciplinary action or actions have been concluded, a licensee whose license has been reinstated or otherwise determined to be in good standing may be considered as a supervisor.

(i) Each applicant shall be required to successfully pass the specialty area test of the national teacher examination of the educational testing service in the area for which licensure is being sought. The passing score for the examination shall be 600.

(1) The educational testing service shall administer the examinations at least twice a year within Kansas.

(2) Each applicant shall register to take the examination through the educational testing service, pay the examination fee directly to the educational testing service, and request that the test score be sent directly to the department from the educational testing service. (Authorized by K.S.A. 1991 Supp. 65-6503; implementing K.S.A. 1991 Supp. 65-6505; effective Dec. 28, 1992; amended March 16, 2001.)

**28-61-3. Application for a license.** (a) Each applicant applying for a license shall submit to the department a completed department-approved application form, the required supporting documentation showing completion of all qualifications for licensure, and the appropriate fee as specified in K.A.R. 28-61-9.

(b) Each applicant shall provide to the department the applicant's academic transcripts and proof of receipt of at least a master's degree. These documents shall be provided directly to the department by the academic institution.

(c) Each applicant who seeks licensure in both speech-language pathology and audiology shall submit a separate application for each license, meet the qualifications for each license, and pay the fee for each license as specified in K.A.R. 28-61-9. (Authorized by K.S.A. 65-6503; implementing K.S.A. 1999 Supp. 65-6506; effective Dec. 28, 1992; amended March 16, 2001.)

**28-61-4. Application for a temporary license.** (a) Each applicant who has completed the education and clinical practicum pursuant to

K.S.A. 65-6505, and amendments thereto, but has not completed a supervised postgraduate professional experience or examination, or both, shall apply for a temporary license. This temporary license shall be issued for a period of 12 months and may be renewed for one subsequent 12-month period upon request and with the department's approval.

(b) Each applicant applying for a temporary license shall submit to the department a completed department-approved application form, the required supporting documentation showing completion of education and clinical practicum, and the appropriate fee as specified in K.A.R. 28-61-9.

(c) Each applicant shall provide to the department the applicant's academic transcripts and proof of receipt of at least a master's degree. These documents shall be provided directly to the department by the academic institution.

(d) Each applicant seeking a temporary license for the purpose of completing a supervised postgraduate professional experience shall receive a temporary license before beginning the supervised postgraduate professional experience.

(1) Each applicant shall provide to the department a plan for completion of the supervised postgraduate professional experience that has been signed by a supervisor who is currently fully licensed in Kansas in the area in which the applicant seeks licensure.

(2) Each applicant shall report any changes in the plan to the department.

(3) At the conclusion of the experience, each supervisor shall sign and submit to the department a report that documents satisfactory completion of the supervised postgraduate professional experience.

(e) To renew a temporary license, each applicant shall submit to the secretary a letter of appeal, supporting documentation showing that the examination or supervised professional experience, or both, was not completed, and the temporary licensure fee as specified in K.A.R. 28-61-9.

(f) Each applicant who seeks temporary licensure in both speech-language pathology and audiology shall submit a separate application for each temporary license, meet the qualifications for each temporary license, and pay the fee for each temporary license.

(g) A temporary license may be issued to enable an applicant for reinstatement to complete the

continuing education requirements. This license shall be valid for up to 12 months and shall not be renewed. (Authorized by K.S.A. 65-6503; implementing K.S.A. 1999 Supp. 65-6506; effective Dec. 28, 1992; amended March 16, 2001.)

**28-61-5. License renewal.** (a) Each applicant for renewal of a license shall submit a completed department-approved application form, the required supporting documentation, and the license renewal fee as specified in K.A.R. 28-61-9.

(b) Each applicant for renewal of a license shall have completed the required clock hours of documented and approved continuing education during each licensure period immediately preceding renewal of the license. Approved continuing education clock hours completed in excess of the requirement shall not be carried over to the subsequent renewal period. There shall be 20 hours of approved continuing education required for each applicant holding a single two-year license and 30 hours if the applicant is licensed in both speech-language pathology and audiology.

(c) Each applicant shall maintain individual records, consisting of documentation and validation of approved continuing education clock hours, a summary of which shall be submitted to the department on the approved form as part of the license renewal application.

(d) For the purpose of measuring continuing education credit, "one clock hour" means a minimum of 50 minutes of direct instruction, exclusive of registration, breaks, or meals.

(e) The content and objective of the continuing education activity shall be primarily related to the practice of speech-language pathology as defined by K.S.A. 65-6501, and amendments thereto, or the practice of audiology as defined by K.S.A. 65-6501, and amendments thereto.

(1) The educational activity shall be for the purpose of furthering the applicant's education in one of the following three content areas:

(A) Basic communication processes, including information applicable to the normal development and use of speech, language, and hearing. Issues related to this content area may include any of the following:

(i) Anatomic and physiologic bases of the normal development and use of speech, language, and hearing;

(ii) physical bases and processes of the produc-

tion and perception of speech, language, and hearing;

(iii) linguistic and psycholinguistic variables related to normal development and use of speech, language, and hearing; or

(iv) technological, biomedical, engineering, and instrumentation information;

(B) professional areas, including information pertaining to disorders of speech, language, and hearing. Issues related to this content area may include any of the following:

(i) Various types of communication disorders, their manifestations, classification, and causes;

(ii) evaluation skills, including procedures, techniques, and instrumentation for assessment; or

(iii) management procedures and principles in habilitation and rehabilitation of communication disorders; or

(C) related areas, including study pertaining to the understanding of human behavior, both normal and abnormal, as well as services available from related professions that apply to the contemporary practice of speech-language pathology, audiology, or both. Issues related to this content area may include any of the following:

(i) Theories of learning and behavior;

(ii) services available from related professions that also deal with persons who have disorders of communications;

(iii) information from these professions about the sensory, physical, emotional, social, or intellectual states of child or adult; or

(iv) other areas, including general principles of program management, professional ethics, clinical supervision, counseling, and interviewing.

(2) Unacceptable content areas shall include marketing, personal development, time management, human relations, collective bargaining, and tours.

(3) The educational activity shall not be a part of the applicant's job responsibilities. In-service shall be considered part of the applicant's job responsibilities.

(f) Continuing education may be accrued by any of the following methods:

(1) Academic coursework related to the contemporary practice of speech-language pathology or audiology, offered by a regionally accredited college or university and documented by transcript or grade sheet:

(A) One academic-semester credit hour shall be equivalent to 15 clock hours of continuing ed-

ucation. One academic-trimester credit hour shall be equivalent to 14 clock hours of continuing education. One academic-quarter credit hour shall be equivalent to 10 clock hours of continuing education; and

(B) one audited academic-semester credit hour shall be equivalent to eight clock hours of continuing education. One audited academic-trimester credit hour shall be equivalent to seven clock hours of continuing education. One audited academic-quarter credit hour shall be equivalent to five clock hours of continuing education;

(2) workshops, seminars, and educational sessions sponsored by an organization, agency, or other entity that has been approved by the secretary:

(A) One clock hour of contact between either a presenter or instructor and the applicant shall be equivalent to one clock hour of continuing education for the applicant; and

(B) contact time shall be rounded down to the nearest one-half hour interval;

(3) preparation and presentation of a new seminar, lecture, or workshop according to the following criteria:

(A) "New" means that the applicant is preparing and making the presentation for the first time in any setting;

(B) credit shall be awarded only for the first presentation at the rate of two clock hours of continuing education for every one clock hour of contact between the instructor and attendees;

(C) if the presentation was given by more than one instructor, the continuing education clock hours shall be prorated among the instructors;

(D) if the sponsor of the workshop, seminar, or lecture did not obtain prior approval from the secretary, the applicant shall be required to present documentation for the secretary's subsequent approval for continuing education credit; and

(4) preparation and presentation of a new graduate course in speech-language pathology or audiology at an accredited college or university:

(A) "New" means that the applicant is teaching the course for the first time in any setting;

(B) six clock hours of credit shall be awarded per new course, up to a maximum of 12 clock hours per licensure period; and

(C) if the course was prepared and presented by more than one instructor, the continuing education clock hours shall be prorated among the instructors;

(5) the successfully completed supervision of a

postgraduate professional experience as specified in K.A.R. 28-61-2 and K.A.R. 28-61-4:

(A) The licensee's name and signature shall appear as the supervisor on the temporary license application submitted by the supervisee as specified in K.A.R. 28-61-4(d)(1);

(B) five clock hours of credit per supervisee shall be awarded to the licensee;

(C) the maximum amount of credit awarded for the supervision of a postgraduate professional experience shall be five clock hours per licensee per licensure period; and

(D) the licensee seeking continuing education credit shall apply for subsequent approval according to subsection (1) of this regulation; or

(6) self-directed study courses that are directly oriented to improving the applicant's professional competence and that are approved by the secretary:

(A) Self-directed study courses shall receive prior approval from the secretary;

(B) courses shall be sponsored by a nationally recognized professional organization in audiology or speech-language pathology and that are accompanied by an examination or measurement tool to determine successful completion of the course;

(C) self-study materials may include audiotapes, videotapes, and study kits; and

(D) one clock hour of time required to complete the self-directed study material, as specified by the sponsor of the material, shall be equivalent to one clock hour of continuing education.

(g) Continuing education sponsors seeking prior approval for a single offering of a continuing education activity shall apply to the secretary. Approval may be granted by the secretary by one of the following methods.

(1) An organization, institution, agency, or individual shall be qualified for approval as a sponsor of a continuing education activity if, after review of the application, the secretary determines that the applicant meets all of the following conditions:

(A) The sponsor presents organized programs of learning.

(B) The sponsor presents subject matters that integrally relate to the practice of speech-language pathology or audiology, or both as specified in K.A.R. 28-61-5(e).

(C) The sponsor's program activities contribute to the professional competency of the licensee.

(D) The sponsor's program presenters are in-



dividuals who have education, training, or experience that qualifies them to present the subject matter of the programs.

(2) An organization, institution, agency, or individual shall be qualified for approval as a sponsor of continuing education if the American speech-language-hearing association has approved the organization, institution, agency, or individual as a continuing education sponsor and the sponsor presents subject matter as specified in K.A.R. 28-61-5(e).

(h) Continuing education sponsors seeking long-term sponsorship for continuing education activities shall apply to the secretary. Approval may be granted by the secretary if the organization, institution, agency, or individual agrees to perform all of the following:

(1) Present organized programs of learning;

(2) present subject matter that integrally relates to the practice of speech-language pathology or audiology, or both and the sponsor presents the subject matter specified in K.A.R. 28-61-5(e);

(3) approve and present program activities that contribute to the professional competency of the licensee; and

(4) sponsor program presenters who are individuals with education, training, or experience that qualifies them to present the subject matter of the programs.

(i) All approved continuing education sponsors that received approval by the method specified in subsection (i) shall provide the following:

(1) A certificate of attendance to each licensee who attends a continuing education activity. The certificate shall state the following:

(A) The sponsor's name and approval number;

(B) the date of the program;

(C) the name of the participant;

(D) the total number of clock hours of the program, excluding introductions, registration, breaks, and meals;

(E) the program's title and its presenter;

(F) the program site; and

(G) a designation of whether the program is approved for speech-language pathology or audiology, or both; and

(2) a list of attendees, license numbers, and the number of continuing education clock hours completed by each licensee upon request and in a format approved by the department.

(j) (1) Licensees who attend activities of continuing education sponsored by the American

speech-language-hearing association shall retain either of the following:

(A) The letter of confirmation received from the continuing education registry of the American speech-language-hearing association that includes the following:

(i) The licensee's name, address, and social security number;

(ii) the course title;

(iii) the sponsor's name; and

(iv) the number of continuing education units awarded; or

(B) the licensee's transcript from the continuing education registry of the American speech-language-hearing association.

(2) One continuing education unit shall be equivalent to 10 clock hours of continuing education.

(k) All continuing education sponsors that received approval by the method outlined in subsection (i) shall report to the secretary annually to maintain the designation as an approved sponsor. The application shall require a list of all continuing education programs provided by the approved sponsor during the previous calendar year and additional documentation deemed necessary by the secretary to ensure that the approved sponsor is meeting or exceeding the standards set forth in article 61.

(l) Any licensee who completes a continuing education activity that was not sponsored by an approved continuing education sponsor may submit information and documentation on a form provided by the department, requesting subsequent approval for an activity that has already taken place.

(m) Each licensee whose initial licensure period is less than 24 months shall be required to obtain not less than one hour of continuing education for each month in the initial licensure period for those who hold a single license and not less than one and one-quarter hours of continuing education for each month in the initial licensure period for those who hold a dual license. (Authorized by K.S.A. 65-6503; implementing K.S.A. 1999 Supp. 65-6506; effective Dec. 28, 1992; amended March 16, 2001.)

**28-61-6. Application for person with license issued by another state.** (a) Each applicant applying for a license who is presently or has been licensed in another state shall submit a completed department-approved application form

with the license fee as specified in K.A.R. 28-61-9.

(b) Each application shall be evaluated by comparing the qualifications met to obtain the original license, and any subsequent licenses, with the current qualifications for Kansas licensure. The qualifications of one of the states that issued a license shall be equal to or in excess of the Kansas licensure qualifications at the time the applicant seeks a Kansas license.

(c) Each applicant shall be in good standing with each licensing agency that has issued a license to the applicant.

(d) "Good standing" means both of the following:

(1) The applicant's license is not under any administrative proceeding.

(2) The applicant's license is not under any disciplinary action. (Authorized by K.S.A. 65-6503; implementing K.S.A. 1999 Supp. 65-6506; effective Dec. 28, 1992; amended March 16, 2001.)

**28-61-7. Reinstatement of a lapsed license.** (a) Each applicant whose license has lapsed shall pay the reinstatement fee and license renewal fee as specified in K.A.R. 28-61-9.

(b) Each applicant whose license has lapsed shall, within five years of the most recent expiration date, reinstate that license by submitting evidence that the applicant has accumulated, within the past two calendar years before the date of application for reinstatement, 20 contact hours of approved continuing education.

(c) Each applicant whose Kansas license has lapsed for more than five years beyond its expiration date shall reinstate by submitting any of the following types of evidence:

(1) Current licensure in another jurisdiction that requires completion of a number of contact hours of continuing education for license renewal that is equivalent to or greater than the number of hours required in Kansas;

(2) licensure in another jurisdiction sometime during the preceding five-year period, and completion of 20 contact hours of approved continuing education within two calendar years before the date of application for reinstatement; or

(3) satisfactory completion of a plan for reinstatement that has been submitted to and approved by the speech-language pathology and audiology advisory board and by the department. (Authorized by K.S.A. 65-6503; implementing

K.S.A. 1999 Supp. 65-6506; effective Dec. 28, 1992; amended March 16, 2001.)

**28-61-8. Assistants.** (a) Each speech-language pathology assistant and audiology assistant shall meet the following criteria:

(1) Have received a high school diploma or equivalent;

(2) complete a training program conducted by a Kansas-licensed speech-language pathologist or audiologist. This training shall include the following:

(A) Ethical and legal responsibilities;

(B) an overview of the speech, language, and hearing disorders;

(C) response discrimination skills;

(D) behavior management;

(E) charting of behavioral objectives and recordkeeping;

(F) teaching principles, if applicable to the employment setting; and

(G) other skill training as required by the employment setting; and

(3) receive ongoing supervised training by a Kansas-licensed speech-language pathologist or audiologist for a minimum of one hour per month.

(b) Each speech-language pathology assistant or audiologist assistant may perform the following tasks:

(1) Deliver programs and procedures that are planned, designed, and supervised by the Kansas-licensed speech-language pathologist or audiologist;

(2) record, chart, graph, report, or otherwise display data relative to client performance, using behavior modification charting and graphing when appropriate;

(3) participate with the Kansas-licensed speech-language pathologist or audiologist in research projects, public relations programs, or similar activities;

(4) perform clerical duties;

(5) prepare instructional materials; and

(6) monitor hearing aids and other equipment.

(c) A speech-language pathology assistant or audiologist assistant shall not perform any of the following tasks:

(1) Diagnose or write treatment plans for individuals with speech, language, or hearing disorders;

(2) interpret or discuss confidential information or test results, despite the fact that this in-

formation may be requested by the client, a family member, or referring agent; or

(3) perform any procedure for which the assistant is not qualified, has not been adequately trained, or is not receiving adequate supervision.

(d) Each assistant shall be supervised by a Kansas-licensed speech-language pathologist or audiologist. The supervisor shall be licensed to practice in the field in which the assistant is providing services.

(1) Each supervisor shall be responsible for determining that the assistant is satisfactorily qualified and prepared for the duties assigned to the assistant.

(2) Each supervisor shall obtain, retain, and maintain on file documentation of the assistant's qualifications and training outlined in subsection (a).

(3) Only the supervisor shall exercise independent judgment in performing professional procedures for the client. The supervisor shall not delegate the exercise of independent judgment to the assistant.

(e) Each supervisor shall directly supervise at least 10 percent of the assistant's client contact time. No portion of the assistant's direct client contact shall be counted toward the ongoing training required in subsection (a).

(f) "Direct supervision" means the physical presence of the supervisor while the assistant is in contact with the client.

(g) Each supervisor shall, within 30 days of employing an assistant, submit written notice to the department of the assistant's name, employment location, and verification that the assistant meets the established qualifications listed in subsection (a). Each supervisor shall notify the department of any change in the status of an assistant.

(h) Each supervisor shall perform all of the following tasks:

(1) Develop a system to evaluate the performance level of each assistant under the licensee's supervision;

(2) retain and maintain on file documentation of the performance level of each assistant supervised; and

(3) report to the department at the time of the supervisor's license renewal, on a department-approved form, the name and employment location of each assistant. (Authorized by K.S.A. 65-6503; implementing K.S.A. 1999 Supp. 65-6501; effective Dec. 28, 1992; amended March 16, 2001.)

**28-61-9. Fees.** (a) The license fee shall be \$135.00. The license application fee for an initial licensure period of less than 24 months shall be prorated at \$5.50 per month for any full or partial month, until October 31 of the calendar year that is not less than 12 months and not more than 24 months from the date of application.

(b) The temporary license fee and temporary license renewal fee shall be \$65.00.

(c) The license renewal fee shall be \$135.00.

(d) The late license renewal fee shall be \$50.00.

(e) The license reinstatement fee shall be \$135.00.

(f) The wall or wallet card license replacement fee shall be \$10.00.

(g) The sponsorship application fee shall be \$150.00. (Authorized by and implementing K.S.A. 1999 Supp. 65-6512; effective Dec. 28, 1992; amended March 16, 2001.)

**28-61-10. Change of name or address.**

(a) Each licensee shall notify the department of any name or address change within 15 days of the change. Each licensee who fails to comply with this regulation may be subject to disciplinary action by the department pursuant to K.S.A. 65-6508, and amendments thereto.

(1) Notice of each address change shall be submitted to the department and shall include the licensee's name, license number, previous mailing address, and new mailing address.

(2) Complete notification of each name change shall meet the following criteria:

(A) Be submitted to the department in writing within 90 days of the change;

(B) include the licensee's previous name, new name, and license number; and

(C) be accompanied by a copy of a marriage certificate, court decree evidencing the change, or a social security card reflecting the new name.

(b) Each licensee seeking a replacement license or license renewal card, or both, shall perform the following:

(1) Submit a department-approved form for each and payment of the applicable replacement fee; and

(2) return, if possible, the most recently issued license or license renewal card, or both. (Authorized by and implementing K.S.A. 65-6503; effective Dec. 28, 1992; amended March 16, 2001.)

**28-61-11. Unprofessional conduct.** Each

of the following acts by a licensee shall be evidence of unprofessional conduct:

(a) Misrepresenting any professional qualifications or credentials, including any of the following:

(1) Impersonating another licensed professional;

(2) knowingly allowing the use of one's license or license number by another person; or

(3) using an academic title that has not been conferred by an accredited educational institution;

(b) improper certification of services rendered when these services were not provided or supervised by the licensee;

(c) falsifying documents of personal data or qualifications in the application for licensure;

(d) aiding in the submission of false information or sanctioning the submission of false information for the purpose of another person obtaining licensure;

(e) misrepresenting services provided under one's professional license;

(f) promoting or endorsing products in a false or misleading manner;

(g) making unsupported or misleading claims about the efficacy of any professional service;

(h) performing services that fall under the scope of practice but for which the licensee has not received training that can be documented by an academic transcript or a certificate of training completion;

(i) performing or offering to perform services that are unwarranted;

(j) billing or receiving remuneration for services not rendered;

(k) withholding or failing to provide information that might affect a client's decision regarding the establishment or continuation of the professional relationship;

(l) failing to disclose to a client a proprietary interest in any commercial enterprise that might affect the client's decision regarding services;

(m) using undue influence, the threat of harm, or any false claim of future risk in order to promote sales, services, or products for personal gain or profit;

(n) failing to exercise appropriate supervision over clinical practicum students, temporarily licensed postgraduate professionals, or assistants with whom the licensee has a supervisory relationship;

(o) failing to report to the department alleged violations by speech-language pathologists and audiologists of Kansas statutes or regulations per-

taining to the practice of speech-language pathology and audiology; and

(p) refusing to cooperate in a timely manner with the investigation of complaints under the jurisdiction of the Kansas department of health and environment. (Authorized by K.S.A. 65-6503 and 65-6508; implementing K.S.A. 65-6508; effective March 16, 2001; amended April 25, 2008.)

#### Article 62 to 64.—RESERVED

### Article 65.—EMERGENCY PLANNING AND RIGHT-TO-KNOW

#### A. GENERAL REGULATIONS

**28-65-1. General provisions.** (a) Any reference by these rules and regulations to standards, procedures, or requirements of 40 C.F.R. Parts 350, 355, 370, and 372, as in effect on July 1, 1998, shall constitute a full adoption by reference of the part, subpart, and paragraph so referenced, including any notes and appendices associated therewith, unless otherwise specifically stated in these regulations. When the same word is defined both in the Kansas statutes and in any federal regulation adopted by reference in the regulations and the definitions are not identical, the definition prescribed in the Kansas statutes shall control.

(b) When used in any provisions adopted from 40 C.F.R. Parts 350, 355, 370, and 372, as in effect on July 1, 1998, the following changes shall apply:

(1) The words "the United States" shall be replaced with the words "the state of Kansas."

(2) "Environmental protection agency" shall be replaced with the "Kansas department of health and environment."

(3) "Administrator" or "regional administrator" shall be replaced with the "secretary of the department of health and environment."

(4) "Federal register" shall be replaced with "Kansas register." (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended Nov. 22, 1993; amended June 4, 1999.)

**28-65-2. Definitions.** (a) "Commission" means the Kansas state emergency response commission established under K.S.A. 65-5703, and amendments thereto.

(b) "Department" means the Kansas department of health and environment.

(c) "Extremely hazardous substance" means a substance listed in the appendices to 40 C.F.R.



Part 355, emergency planning and notification, as in effect on July 1, 1998 or on the list of Kansas reportable chemicals authorized by K.S.A. 65-5704, and amendments thereto.

(d) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with, that person. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

(e) "Federal act" means Title III of the superfund amendments and reauthorization act of 1986, P.L. 99-499, and the emergency planning and community right-to-know act of 1987.

(f) "Hazardous chemical" has the meaning given to that term by 40 C.F.R. Part 370, hazardous chemical reporting; community right-to-know, as in effect on July 1, 1998.

(g) "Kansas tier II form" or "tier II form" means the hazardous chemical inventory form developed by the Kansas department of health and environment.

(h) "Kansas tier II software" means the computer software developed for the Kansas department of health and environment to allow facilities to file Kansas tier II information by electronic submission.

(i) "Material safety data sheets (MSDS)" means reporting sheets required under the occupational safety and health act at 15 U.S.C. 651 et seq., hazard communication program, 29 C.F.R. 1910.1200, as in effect on July 1, 1998.

(j) "Operator" means the owner or owner's designee who is director of a business, service, or industrial concern and conducts the affairs or manages an activity.

(k) "Owner" means proprietor or the person in whom is vested ownership, dominion, possession, or title of property.

(l) "Petroleum fuels" means the following refined petroleum products:

- (1) Gasoline;
- (2) gasohol;
- (3) aviation fuels; and

(4) diesel #1 and #2. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended Nov. 22, 1993; amended Nov. 28, 1994; amended June 4, 1999.)

### **28-65-3. Submitting notifications and reports.**

(a) Except as provided in K.A.R. 28-65-4(e)(3), each notification and report required to be submitted to the commission under sections 302, 311, and 312 of the federal act and these regulations shall be completed using the Kansas tier II form or the Kansas tier II software. The Kansas tier II form or the Kansas tier II software shall be submitted to the bureau of air and radiation of the department.

(b) Each toxic chemical release form submitted pursuant to the requirements of section 313 of the federal act shall be submitted to the bureau of air and radiation, of the department before July 1 of each year for the previous calendar year.

(c) Each emergency release notification submitted pursuant to the requirements of section 304 of the federal act shall be submitted to the division of emergency preparedness of the adjutant general's department.

(d) Hazardous chemical and extremely hazardous substance information submitted under the provisions of sections 302, 311, and 312 of the federal act and subsection (a) of this regulation may be submitted in an alternative aggregate format that includes more than one facility if the following conditions are met:

(1) The facilities reported are under common ownership or a common operator.

(2) A separate listing, including the names and locations of the facilities to which the Kansas tier II form or the Kansas tier II software is to apply, is submitted with the report.

(3) The chemical types and quantities reported on the Kansas tier II form or the Kansas tier II software are similar and representative of those present at all facilities listed.

(4) The proposed alternative aggregate format has been previously reviewed and approved by the department for compliance with the requirements of this article.

(e) Each owner or operator of a facility required to report under this regulation shall notify the department within 60 days following either of the following:

(1) A change in the name, address, or both, of the owner or operator responsible for filing the facility report; or

(2) facility closure. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended, T-89-19, May 27, 1988; amended Sept. 26, 1988;

amended Nov. 22, 1993; amended Nov. 28, 1994; amended June 4, 1999.)

**28-65-4. Fees.** (a) Except as provided in subsections (d) and (e) of this regulation, each owner or operator of a facility required to report under section 312 of the federal act and K.A.R. 28-65-3 shall pay an annual report fee based upon the sum of the maximum daily reportable quantities of extremely hazardous substances or hazardous chemicals, or both, present at the facility as reported on the Kansas tier II form. These fees shall be calculated on forms provided by the department using the tables in paragraphs (c)(1) and (c)(2) of this regulation as appropriate. The fees required under this subsection shall be submitted to the department prior to March 1 of each year at the time of submission of the Kansas tier II form.

(b) Each owner or operator of a facility required to file the toxic chemical release form required under section 313 of the federal act and K.A.R. 28-65-3 shall pay an annual report fee based upon the total quantity of chemicals released as reported on the federal form R. These fees shall be calculated on forms provided by the department using table 3 in paragraph (c)(4) of this regulation. The fees required under this section shall be submitted to the department prior to July 1 of each year at the time of submission of the federal form R.

(c) Fees payable under subsection (a) of this regulation shall be determined using tables 1 and 2 below as applicable.

(1) Fees on the total maximum daily reportable quantity of extremely hazardous substances listed on the Kansas tier II form required under subsection (a) shall be determined using table 1 as follows:

**Table 1**

Sum of the maximum daily Amounts of all extremely Hazardous substances reported (pounds)	Annual fee
1-9,999	\$25
10,000 - 999,999	\$50
1,000,000 or greater	\$150

(2) Fees on the total maximum daily reportable quantity of hazardous chemicals listed on the Kansas tier II form required under subsection (a) shall be determined using table 2 as follows:

**Table 2**

Sum of the maximum daily Amounts of all hazardous Chemicals reported (pounds)	Annual fee
10,000 - 99,999	\$25
100,000 - 999,999	\$50
1,000,000 - 9,999,999	\$150
10,000,000 or greater	\$300

(3) For the purposes of this subsection the term "hazardous chemical" shall not include any extremely hazardous substances or sand, gravel, clay, salt or brine or other comparable substances as approved by the department in the calculation of fees.

(4) Fees payable under subsection (b) of this regulation on the total quantity of chemicals released reported on the federal form R shall be determined as follows:

**Table 3**

Sum of the total chemical Releases reported (pounds)	Annual fee
100 - 19,999	\$250
20,000 - 99,999	\$700
100,000 - 999,999	\$1,700
1,000,000 or greater	\$3,000

(d) Each owner or operator of an oil or gas well that is required to report under section 312 of the federal act and K.A.R. 28-65-3 shall pay an annual fee of \$25. For the purposes of this subsection, the term "well" shall have the meaning given such term by K.S.A. 55-150. The fee required under this section shall be submitted to the department prior to March 1 of each year at the time of submission of the information required on the Kansas tier II form.

(e) Each owner or operator of a facility that contains petroleum fuels as defined in K.A.R. 28-65-2 that is required to report under section 312 of the federal act and K.A.R. 28-65-3 shall be exempt from the fee requirements of subsection (a) of this regulation as applicable to petroleum fuels in storage tanks provided:

(1) The storage tank is registered under the provisions of K.A.R. 28-44-16 or K.A.R. 28-44-29; and

(2) the owner or operator has paid an annual registration fee in compliance with K.A.R. 28-44-17 or 28-44-28; and

(3) the owner or operator has submitted the necessary information to the department on the special storage tank program forms provided by

the department to comply with the reporting requirements of section 312 of the federal act, K.A.R. 28-65-3, K.A.R. 28-44-16 and K.A.R. 28-44-29.

(f) Each owner or operator of a facility that qualifies for a fee exemption under subsection (e) of this regulation that has chemicals present other than petroleum fuels that are reportable under section 312 of the federal act and K.A.R. 28-65-3 shall pay annual report fees in compliance with subsection (a) of this regulation as applicable to the remaining chemicals.

(g) Each owner or operator of a facility that qualifies for a fee exemption under subsection (e) may elect to comply with the provisions of these regulations by submitting the Kansas tier II form in lieu of submitting the required information on the special storage tank program form. Such owners or operators that elect to submit the Kansas tier II form shall calculate and pay annual report fees in compliance with subsection (a) of this regulation as applicable.

(h) Each owner or operator subject to these regulations shall not be assessed an annual report fee in total greater than \$3000 during any single report year excluding late fees.

(i) All fees shall be remitted by check, draft, or money order payable to the department and shall be non-refundable. Any owner or operator may make an aggregate payment covering more than one facility by a single check, draft, or money order provided a statement accompanies each aggregate payment which indicates the individual facility names, addresses, and fees for each facility for which payment is made.

(j) Each owner or operator of a facility subject to these regulations shall not be charged a fee for chemical information submitted on a voluntary basis beyond that required under K.A.R. 28-65-3 provided that the optional nature of the information is clearly marked in the appropriate box on the Kansas tier II form. (Authorized by and implementing K.S.A. 65-5704; effective Nov. 22, 1993; amended Nov. 28, 1994.)

#### **Article 66.—LOCAL ENVIRONMENTAL PROTECTION GRANT PROGRAM**

**28-66-1. Definitions.** As used in K.A.R. 28-66-1 through 28-66-4 unless otherwise specified:

(a) “Base grant” means state water plan fund monies allocated to the Kansas department of

health and environment and awarded to local entities for the purpose of developing and implementing a local environmental protection plan for a term which coincides with the state fiscal year.

(b) “Core program” means services that shall be provided by each local entity that is awarded a base grant, and which include the following:

(1) The development and implementation of an annual local environmental protection plan;

(2) the development, implementation, and enforcement of an environmental code which has been approved by the secretary of KDHE and which establishes standards for the management of on-site wastewater systems for the treatment and disposal of domestic sewage only;

(3) the development, implementation and enforcement of an environmental code which has been approved by the secretary of KDHE and which establishes standards for the management water supply wells which do not meet the definition of a public water supply well pursuant to K.S.A. 65-162a (b);

(4) information, education, and technical assistance; and

(5) organization and coordination of a local environmental protection committee to provide advice and counsel to the local entity on the content and administration of the local environmental protection plan.

(c) “KDHE” means the Kansas department of health and environment.

(d) “Local environmental protection plan” means a document revised annually by the local entity which includes objectives and workplans intended to implement the environmental protection strategy of the state water plan and which serves as the application for a base grant.

(e) “Local entity” means a county health department formed pursuant to K.S.A. 19-3701 et seq. and amendments thereto, other local entity formed under the power of the board of county commissioners to conduct any of the business of the county pursuant to K.S.A. 1992 Supp. 19-101a, or a multi-county entity formed pursuant to K.S.A. 12-2901 et seq. and amendments thereto.

(f) “Program guidelines” means a document prepared by KDHE by April 1 of each year which establishes program priorities, grant application and program reporting procedures, and other pertinent grant instructions for the next state fiscal year.

(g) “Secretary” means the secretary of KDHE.

(h) "Supplemental program" means any of the following:

(1) The development and implementation of a plan for subdivision water and wastewater pursuant to K.S.A. 1992 Supp. 12-747, K.S.A. 65-3311 and amendments thereto;

(2) the development and implementation of a solid waste management plan pursuant to K.S.A. 65-3405 and amendments thereto;

(3) the development and implementation of a hazardous waste management plan that is consistent with K.S.A. 65-3430 and amendments thereto;

(4) participation in the development and implementation of a nonpoint source pollution control plan which identifies the activities and responsibilities of the local environmental protection program in the management of nonpoint pollutant sources; and

(5) the development and implementation of a public water supply protection plan which at a minimum:

(A) specifies the duties of local government agencies, the public water supplier and other local entities in the development and implementation of a public water supply protection plan;

(B) defines the public water supply protection area;

(C) identifies all potential contaminant sources within the defined public water supply protection area;

(D) identifies management practices which may be implemented to prevent contamination of the public water supply by each identified contaminant source, including but not limited to information and education, technical assistance, financial assistance, and the use of local ordinances;

(E) establishes a contingency plan to provide an alternate source of drinking water for each public water supply in the case that the public water supply becomes contaminated;

(F) requires that for any new public water supply all potential contaminant sources within the expected protection area be identified and management practices for each contaminant source identified; and

(G) provides for public participation in the development of any public water supply protection plan.

(i) "Target grant" means funding which may be awarded to a local entity in addition to a base grant for the purpose of conducting an approved program objective for which base grant funds are not

sufficient. (Authorized by and implementing K.S.A. 75-5657; effective Feb. 28, 1994.)

**28-66-2. Base grants.** (a) A local entity may apply for a local environmental protection base grant each year on forms provided by KDHE.

(b) Base grant amounts shall be subject to the availability of funding.

(c) All base grant payments shall be made contingent upon the submission to KDHE of quarterly program and fiscal reports, as required in the grant award agreement, which are determined by KDHE to demonstrate satisfactory progress toward completion of approved program objectives.

(d) Upon approval of its local environmental protection plan by KDHE, a local entity shall be eligible to receive a base grant for the implementation and maintenance of the approved local environmental protection plan.

(e) Allocation of base grants shall be made in accordance with the following formula where population is the population of the local entity as determined by the most recent United States census figures for the state of Kansas:

(1) Counties with a population less than 12,727 shall be eligible for a base grant which is equal to or greater than \$7,000;

(2) counties with a population greater than 227,273 shall be eligible for a base grant which is equal to or greater than \$125,000;

(3) for all other counties the base grant shall be equal to or greater than the product of the county's population  $\times$  \$0.55; and

(4) a local entity which consists of multiple counties shall receive a base grant equal to or greater than the sum of the base grants for which each individual county would be eligible under subsections (e) (1) through (e) (3) of this regulation.

(f) During a given grant period, if the appropriation from the state water plan is not adequate to award each local entity the base grant amount for which it is eligible under subsection (e) of this regulation, then the amount for which the local entity would be eligible under subsection (e) shall be divided by the total amount of funding for which all local entities have applied. The quotient shall then be multiplied by the total amount of funding appropriated for local environmental protection grants to determine the amount of the local entity's grant.

(g) Base grant awards shall be made in the



form of an agreement which is signed by the secretary and the signatories of the local environmental protection plan as described in K.A.R. 28-66-4 (a) (1). The agreement shall establish:

(1) A schedule for the payment of the base grant to the local entity;

(2) approved objectives of the local environmental protection plan which the local entity agrees to execute;

(3) quarterly reporting requirements; and

(4) general terms which are necessary to ensure that the grant funds are expended and accounted for in accordance with applicable state statutes.

(h) Local environmental protection grant monies that remain after all base grants have been awarded may be made available to:

(1) Increase the base level of funding for which local entities are eligible as described in subsection (e) of this regulation; or

(2) provide target grants to base grant recipients on a case-by-case basis.

(i) Local environmental protection grant funds may be used to complement but shall not be used to replace financial assistance which a local entity may be eligible to receive from a separate source of funding established to support any core or supplemental program activity.

(j) Eligible program activities and projects. Only those activities and projects which result in the protection and restoration of the waters of the state shall be eligible for base or target grant funding. Eligible program activities include development and implementation of the core program and any supplemental program activity approved by KDHE.

(k) Eligible expenditures. Eligible expenditures of the base grant may include the reasonable and necessary costs of:

(1) Salary of personnel responsible for the execution of a program activity or project included in an approved local environmental protection plan;

(2) in-state and out-of-state travel, except that out-of-state travel shall require prior approval by KDHE unless it is incidental to the implementation of routine program activities included in an approved local environmental protection plan;

(3) capital equipment and supplies necessary to implement all requirements of an environmental code approved by the secretary of KDHE and adopted by resolution by the board of county commissioners, except that all capital equipment pur-

chases greater than \$75.00 shall require prior written approval of KDHE. If a local entity withdraws from the local environmental protection program within three years of any approved capital equipment purchase, KDHE retains the authority to recover the capital equipment;

(4) purchasing, printing, production and dissemination of brochures, educational and technical assistance materials, or surveys;

(5) subcontracts with other governmental entities or private business for the purpose of completing any portion of an approved local environmental protection plan, except that all subcontracts must receive prior approval by KDHE.

(l) Ineligible expenditures. Ineligible expenditures of the base grant include, but are not limited to, the following:

(1) Costs incurred prior to the beginning of the state fiscal year for which the base grant is awarded unless written approval for reimbursement of such costs is provided by KDHE;

(2) costs incurred after the end of the state fiscal year for which the base grant is awarded unless grant funds have been properly encumbered by the local entity;

(3) vehicle purchases; and

(4) construction costs of any facility or structure. (Authorized by and implementing K.S.A. 75-5657; effective Feb. 28, 1994.)

**28-66-3. Target grants.** (a) Upon KDHE's announcement of the availability of target grant funds, a target grant may be requested by a base grant recipient to conduct an approved objective for which the base grant is inadequate, except that the following requests shall be considered ineligible:

(1) Salary for permanent staff; and

(2) any activity or item specified in K.A.R. 28-66-2 (k).

(b) Application for target grants shall be made on forms provided by KDHE. Forms for target grants shall not be made available until all base grants have been awarded.

(c) All terms of the base grant agreement shall apply to the target grant. (Authorized by and implementing K.S.A. 75-5657; effective Feb. 28, 1994.)

**28-66-4. Local environmental protection plan.** (a) A local environmental protection plan shall be developed annually by the local entity and shall be submitted and approved by

KDHE prior to any grant award. The local environmental protection plan shall contain the following information:

(1) A cover sheet signed by the chairman of the county board of health and the program director appointed by the county board of health. If the grant applicant is a local entity other than a county health department, the local environmental protection plan shall be signed by the chairman of the board of county commissioners, a board formed pursuant to K.S.A. 12-2901 et seq. or K.S.A. 12-2908, or other legally formed board which has been approved by KDHE as appropriate for the purposes of implementing a local environmental protection plan;

(2) a description of existing local ordinances and services in each of the core program and supplemental program areas identified in K.A.R. 28-66-1 (b) and K.A.R. 28-66-1 (h) respectively, including the name, address and phone number of the local person responsible for implementing the ordinances and services described;

(3) a statement of each objective for which funding is being requested, and a workplan which identifies the sequence of steps that will be completed in order to accomplish the stated objective and an approximate date of completion for each step; and

(4) a detailed program budget which identifies the costs of program operation including, but not limited to, personnel, travel, supplies, capital expenditures, and subcontracts.

(b) KDHE may issue a base grant after it has been determined that the local environmental protection plan is consistent with the environmental protection strategy of the state water plan, K.S.A. 75-5657, and all other statutes, regulations, documents or guidelines relevant to sanitary or environmental codes, or both, subdivision water and wastewater management, solid waste, hazardous waste, public water supply protection, and nonpoint source pollution.

(c) KDHE may withhold the approval of a local environmental protection plan if it is determined that the local entity has not satisfactorily completed the approved objectives under the previous year's local environmental protection plan, except that the applicant shall be given the opportunity to demonstrate compelling circumstances which prohibited the completion.

(d) Any local environmental protection plan may be amended during the state fiscal year. Each proposed amendment shall be submitted to

KDHE in writing and KDHE shall provide written approval of the amendment. (Authorized by and implementing K.S.A. 75-5657; effective Feb. 28, 1994.)

#### Article 67.—HEALTH CARE DATABASE

**28-67-1. Definitions.** For purposes of the regulations in this article, the following words, terms and phrases are hereby defined as follows:

(a) "Aggregate data" means data which is obtained by combining like data in a manner which precludes specific identification of an individual.

(b) "Board" means the health care data governing board.

(c) "CHES" means the center for health and environmental statistics.

(d) "Compilation" means the arrangement of data collected by and furnished to the secretary acting under agreement with the secretary for release and dissemination to the public.

(e) "Fee fund" means the health care database fee fund created by K.S.A. 65-6804 and amendments thereto.

(f) "Health care data" means any data relating to health care, health status, including environmental factors, the health care system, costs and outcomes.

(g) "Health care information" means any health data that has been transformed from its raw form into a more general, less-technical form.

(h) "Health care provider" means any person, organization or entity that renders health care services as described in K.S.A. 65-6805 and amendments thereto.

(i) "Individual" means a single human being.

(j) "Patient or client" means an individual who receives any health care service.

(k) "Person" means any individual, association, partnership, corporation or other entity.

(l) "Primary data collection" means data that were previously unavailable for distribution to the public and are initially collected pursuant to this act.

(m) "Public domain data" means data that were previously collected and available to the public by another source.

(n) "Public health data" means data including epidemiological, health status and community health assessment data.

(o) "Public use data" means data that are available to the general public. This includes data available in electronic or any other form.

(p) "Record identifier" means a unique code generated and assigned to an individual record and used to identify that individual record among databases.

(q) "Secretary" means the secretary of the Kansas department of health and environment.

(r) "State agency" means any regents institution or department under the direction of a cabinet secretary, an elected official or regulatory board.

(s) "Third party payer" means any public or private payer of health care services and includes accident and sickness insurers, health maintenance organizations, health plans and alliances, nonprofit medical and hospital service organizations, and fiscal intermediaries for government-funded programs. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

**28-67-2. Health care database; information collected.** Information regarding various health factors shall be obtained. The health factors shall include, but not be limited to:

(a) mortality and natality, including accidental causes of death;

(b) morbidity;

(c) health behavior;

(d) disability;

(e) health care costs and financing;

(f) health care human resources;

(g) health service utilization and availability;

(h) environmental contaminants;

(i) demographics;

(j) familial social and economic conditions affecting health status; and

(k) population-based health care outcomes. (Authorized by and implementing K.S.A. 65-6801, as amended by L. 1994, Ch. 90, sec. 2; effective Dec. 19, 1994.)

**28-67-3. Health care data collection and submission.** (a) Data shall be:

(1) collected and submitted under uniform parameters established by the secretary and approved by the board;

(2) obtained from existing data sources in the public and private sector, where available to minimize the imposition and cost of new reporting requirements;

(3) submitted by licensing boards and agencies, credentialing and registering agencies and health care providers on a schedule defined by the secretary and approved by the board;

(4) submitted by third party payers, on a calendar year basis, annually by July 1 of the following calendar year and shall:

(A) be derived from standard billing or data collection documents or their replacements; and

(B) include only information for services rendered in the calendar year; and adjustments made for 180 days after the close of the calendar year; and

(5) submitted in a manner that does not identify individuals except through the use of a record identifier established by the secretary and approved by the board; except for public domain data, where data may be submitted that includes identification of individuals.

(b) Special data collections.

(1) Special primary data collection and extrapolations may be used as an alternative to or to supplement collection of existing health data from health care providers. The use of primary data collection shall be approved by the board to the extent it can be shown that the information being requested is consistent with the act and will meet validity and quality standards established by the secretary and approved by the board.

(2) Data may also be collected by the secretary from third party payers and health care providers for the purposes of population-based health outcomes comparisons.

(c) The secretary may be delegated by the board the authority to carry out any of the responsibilities granted to the board under these regulations. (Authorized by and implementing K.S.A. 65-6805, as amended by L. 1994, Ch. 90, sec. 4; effective Dec. 19, 1994.)

**28-67-4. Health care data release and rerelease.** (a) Data and information received by the secretary and maintained in the health care database shall be used for:

(1) health policy decisions;

(2) health research;

(3) consumer information; and

(4) epidemiological and other public health functions necessary to protect and promote the health of the state.

(b) Public use data.

(1) Public use data shall be developed and compilation of data shall be made available for general distribution which shall not include:

(A) record identifiers;

(B) social security numbers;

(C) patient or client health insurance identification numbers; or

(D) health care provider identifiers.

(2) The board shall review and approve the content and format of these public use data and compilation formats.

(3) The data and compilation shall be made public information and may be released on magnetic media or any other form.

(c) Special studies and analyses.

(1) Special studies and analyses may also be conducted by the secretary to:

(A) assist in health policy decision-making;

(B) fulfill statutory mandates for health policy or public health purposes; or

(C) minimize the duplicate collection of similar data elements.

(2) Prior to the release of any special studies or analyses conducted by the secretary, the board shall review all products generated and approve those not mandated by statute.

(d) Persons or state agencies making requests for data or information from the database other than those from standard reports shall be required to respond to a set of questions developed by the secretary and approved by the board that defines the information needed, description of the project and the intentions for rerelease of the information. Any request which includes record identifiers, social security numbers, patient or client health insurance identification numbers or health care provider identifiers shall be specifically approved by the board. If the request indicates an appropriate use of the data according to the specifications in K.A.R. 28-67-4(a), the data shall be provided to the person making the request. The request shall be denied by the secretary if the request is not consistent with those specifications in K.A.R. 28-67-4(a). A written explanation for the denial shall be filed with the person making the request.

(e) Subject to K.S.A. 65-6804(d), when compilation and special studies are generated by the secretary which identify health care providers, the health care providers shall be provided a copy of the data referencing them and given the opportunity to submit written comments to the secretary. When comments are received by the secretary within 30 days of the postmark on the notification from the secretary, such comments received shall be released with the data.

(f) Data other than those provided in compilation, public domain and public use data, that in-

cludes record or health care provider identifiers may be released to persons or state agencies for research purposes. Any request for these data shall comply with K.A.R. 28-67-4(d) and be approved by the board. These data with record or health care provider identifiers shall not be rereleased by the person or state agency in any form with these identifiers that does not comply with K.A.R. 28-67-6 and approval of the board.

(g) Any person or state agency may apply to the secretary for data to be used in a research study. A research protocol shall be submitted which shall include, but not be limited to:

(1) a description of the proposed study;

(2) the purpose of the study;

(3) a description of the data elements needed for the study;

(4) a description of the information medium or format requested;

(5) where applicable, a statement indicating whether the study protocol has been reviewed and approved by a human subjects review board;

(6) a description of data security procedures, including who shall have access to the data; and

(7) a description of the proposed use and release of the data.

(h) Any person or state agency requesting the data shall agree to the release, confidentiality, and security of data requirements in K.A.R. 28-67-4, K.A.R. 28-67-6 and K.A.R. 28-67-8.

(i) Prior to the release of a subset of data or compilation, a statement instructing the user or reader about the meaning and significance of the data and the restrictions about redisclosure of the information shall be included.

(j) A data provider may obtain data it has submitted to the database as well as aggregate data. A data provider shall not obtain data submitted by another data provider without approval from that provider. Agreement to grant access to data submitted by another provider shall be filed in writing with the secretary.

(k) Unauthorized use of health care data obtained or collected under K.S.A. 65-6805 and amendments thereto by any person or state agency shall result in termination of system access and no further provision of data.

(l) The board may delegate the secretary the authority to carry out any of the responsibilities granted to the board under these regulations. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)



**28-67-5. Electronic access to public use data.** (a) Persons or state agencies may be granted electronic access to public use data. Definitions of allowable access for data submitted to the database shall be established by the secretary and approved by the board.

(b) All persons or state agencies requesting electronic access to public use data shall complete an application established by the secretary and approved by the board that describes the security procedures to be used to safeguard the data provided according to K.A.R. 28-67-6 and K.A.R. 28-67-8. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

**28-67-6. Confidentiality of the health care database.** (a) Data or information that in any manner identifies an individual shall not be released. Researchers demonstrating the need for data containing record identifiers or names of health care providers shall be subject to the release, confidentiality and security requirements pursuant to K.A.R. 28-67-4, K.A.R. 28-67-6, and K.A.R. 28-67-8 and approval of the board.

(b) Any information generated from manipulations of data provided by the database shall be subject to release, confidentiality and security requirements pursuant to K.A.R. 28-67-4, K.A.R. 28-67-6 and K.A.R. 28-67-8.

(c) The individual forms, computer tapes or other forms of data collected by and furnished to the database shall not be available to the public. Special reports prepared for any data requester shall not be made public if the report identifies an individual.

(d) Public domain data obtained for the health care database may be made public through compilation and as public use data in a manner that identifies health care providers.

(e) Primary data collected which identify individuals shall be kept confidential and shall not be made public. Individual data associated with patient numbers, social security numbers and patient or client health care coverage identification numbers, or any other data that can identify individuals shall be kept confidential and shall not be made public. Any release of primary data shall be subject to K.A.R. 28-67-4.

(f) Primary data collected that identifies health care providers shall be kept confidential and shall not be made public except that public health data which identifies health care providers may be re-

leased. Release of these data shall be subject to K.A.R. 28-67-4.

(g) In this subsection, "small number" means any number that is not large enough to ensure that the identity of individuals and health care providers is protected. Any data element category which contains small numbers shall be aggregated using procedures established by the secretary. The procedures shall follow commonly accepted statistical methodology. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

**28-67-7. Fees established.** (a) Routine compilations produced by the secretary shall be made available to state agencies, health care providers, purchasers, employers, consumers and other interested parties. A fee sufficient to recover the costs of production or duplication may be charged.

(b) Requests for non-routine compilation requiring special analyses shall be billed under contract between the requester and the secretary to include the hourly rate of the analyst or analysts plus all computer, printing and other costs. State agencies asking for data solely for the purposes of analysis may be exempt.

(c) Compilation or data made available on computer tape or other electronic media shall include the cost of the magnetic tape, diskette, or other electronic media.

(d) Providers of data, board members and interested parties shall receive one free copy of the secretary's routine annual and quarterly compilation.

(e) Persons and state agencies requesting electronic access to public use data may be charged a monthly fee for that access.

(f) Providers contributing data to the system may be charged reduced rates for special reports not to exceed seventy-five percent of the fees charged to the public.

(g) The secretary, on behalf of the health care database and as chairperson of the board, shall reserve the right to request a portion of revenues generated from use of data provided to any person that is above the cost of production of products.

(h) All fees collected pursuant to K.A.R. 28-67-7 shall be deposited in the health care database fee fund. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

**28-67-8. Record security.** (a) All staff en-

gaged in the collection, handling, and dissemination of health care data shall be informed of the responsibility to protect the data and the consequences of failure to do so. When employees are hired, each employee shall be instructed on the current procedures used to assure the security and confidentiality of the data. A copy of the confidentiality policy shall be provided to all personnel and a statement of responsibility for data confidentiality shall be explained as a condition of employment.

(b) Employees shall be held accountable for the appropriate use of individual data and for safeguarding the information in their possession. Confidential data may be used only for purposes reviewed and approved by the secretary. Any unauthorized use of health care data from the database shall be strictly prohibited and may subject an employee to termination.

(c) Access to the database shall be restricted to those who specifically require access in order to perform their assigned duties. Access policies and staff members needing to access the database shall be established by the secretary.

(d) Supervisors shall be responsible for maintaining the security for data in the area of their responsibility. Persons or state agencies engaged in the collection, handling, and dissemination of health care data shall develop procedures to govern the release of information. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

**28-67-9. System security.** (a) All health care data shall be maintained on computer systems administered by CHES. A password system shall be used to limit access to computer files. Passwords shall be changed on a schedule determined by CHES staff, and an individual account shall be deleted whenever a staff member terminates employment or is no longer authorized access to the system.

(b) Only CHES staff shall be authorized to load data tapes and install software and file servers. All software shall be checked for computer viruses before being installed.

(c) General access to the central computer area shall be limited to normal work hours only. Access shall be restricted to CHES staff at all other times unless an individual obtains authorization to access the computer area.

(d) Network tape backups shall be stored on-site in a secure fire retardant location. Additional

copies of software, documentation, and backups shall be stored at a secure, off-site location.

(e) Non-Kansas department of health and environment staff shall set up a CHES user account in order to access the health care information system. Passwords shall only be issued to non-Kansas department of health and environment users if they are under contract to Kansas department of health and environment or under the terms of a data sharing agreement. Unauthorized use of health care data by any other person or governmental subdivision granted access to the database shall result in termination of system access and no further provision of data.

(f) Network backups shall be done weekly and at the end of each month. Two copies of the monthly backup tape shall be produced. All network files shall be checked for computer viruses before backup. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

**28-67-10. Eligible contractors.** (a) A contractor may be designated to provide data processing services for the collection of health care information. The contractor may be a public or private organization. Eligible contractors shall provide to the secretary assurances that there are no conflicts of interest.

(b) Persons who shall not be contractors include, but shall not be limited to:

(1) a major purchaser, payer or provider of health care services in Kansas;

(2) a subcontractor of an organization in K.A.R. 28-67-10 (b)(1), except those commissioned to perform only data processing functions;

(3) a subsidiary or affiliate of an organization in K.A.R. 28-67-10 (b)(1) in which a controlling interest is held and may be exercised by that organization either independently or in concert with any other organization in K.A.R. 28-67-10 (b)(1); or

(4) an association of major purchasers, payers or providers of health care services.

(c) State agencies are exempt from the requirement under subsection (b) of this regulation regarding eligibility to contract and may offer a bid if the secretary decides to bid the contract for services.

(d) The contractor may be granted the authority to examine confidential materials and perform other functions authorized by the secretary and approved by the board. The contractor shall com-

ply with all confidentiality and record security requirements pursuant to K.A.R. 28-67-6 and K.A.R. 28-67-8. The release of confidential information by the contractor shall constitute grounds for the secretary to terminate any agreement between the contractor and the secretary. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

**28-67-11. Cooperative agreements.** (a) Where the need for cooperative agreements and memoranda of understanding facilitate the cost-effectiveness of health care data collection, cooperative agreements and memoranda of understanding may be established by the secretary with organizations described in K.A.R. 28-67-10 (b).

(b) Organizations entering cooperative agreements and establishing memoranda of understanding shall provide the secretary assurances that the data will be collected and utilized for their intended purpose only.

(c) Organizations entering cooperative agreements and establishing memoranda of understanding shall be subject to the confidentiality and record security requirements in K.A.R. 28-67-6 and K.A.R. 28-67-8. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

**28-67-12. Data validation.** (a) All data submitted to the health care database shall be evaluated for accuracy and standardization.

(b) Any inconsistencies and non-standard reporting of data submitted to the database shall be documented and reported to the providers of the data. Data providers shall be given 30 days to reconcile the inaccuracies or inconsistencies identified by the secretary.

(c) Comments provided to the secretary pursuant to K.A.R. 28-67-4 (e) may be used to reconcile any inaccuracies or inconsistencies identified by the data provider. (Authorized by and implementing K.S.A. 65-6804, as amended by L. 1994, Ch. 90, sec. 3; effective Dec. 19, 1994.)

#### **Article 68.—KANSAS DRYCLEANER ENVIRONMENTAL RESPONSE ACT**

**28-68-1. Definitions.** For the purposes of K.A.R. 28-68-1 through K.A.R. 28-68-10, the following terms shall be defined as follows. (a) "Applicant" means any person or governmental entity

that applies to the dry-cleaning facility release trust fund.

(b) "Contaminated dry-cleaning site" has the meaning specified in K.S.A. 65-34,148, and amendments thereto.

(c) "Dry-cleaning waste" means waste, including dry-cleaning wastewater, that is generated at a dry-cleaning facility and that contains dry-cleaning solvent.

(d) "Dry-cleaning wastewater" means separator water and all other water that is generated during the dry-cleaning process and contains dry-cleaning solvents.

(e) "Existing dry-cleaning facility" means a dry-cleaning facility that was in operation on or before January 3, 1997.

(f) "Floor drain" means any opening that is less than three inches above the floor surface and leads to a septic tank, storage tank, sanitary sewer, storm sewer, or soils or waters of the state. An opening sealed with a removable seal that prevents dry-cleaning solvent and dry-cleaning wastewater from entering the opening shall not be considered a floor drain.

(g) "Hazardous waste" has the meaning specified in 40 C.F.R. part 261, subparts C and D, as in effect on July 1, 1999, and hereby adopted by reference.

(h) "New dry-cleaning facility" means a dry-cleaning facility that begins operation after January 3, 1997.

(i) "Operator" means any person who manages the daily activities or operations, or both, of a dry-cleaning facility.

(j) "Secondary containment structure" means a tank, tray, containment pallet, containment basin, a floor surface contained within a dike and the dike proper, or a similar structure that is designed to contain spills and leaks from dry-cleaning units, dry-cleaning solvent storage areas, or dry-cleaning waste storage areas. (Authorized by and implementing K.S.A. 1999 Supp. 65-34,143; effective Jan. 3, 1997; amended Dec. 22, 2000.)

**28-68-2. Registration of facilities.** (a) Each owner of any dry-cleaning facility shall annually submit to the department a separate registration for each operating dry-cleaning facility. Each registration shall be submitted on a form prepared by the department.

(b) Each owner of a new dry-cleaning facility shall submit a registration form not later than 30 days after operations begin.

(c) Each owner of any dry-cleaning facility shall submit a registration fee of \$100.00 with the registration form for each operating dry-cleaning facility. The registration fee shall cover a single calendar year. Registrations shall be submitted and fees paid on or before January 31, or the dry-cleaning facility shall be considered in violation of the Kansas dry cleaner environmental response act.

(d) Each owner of any dry-cleaning facility shall post the owner's registration number in a conspicuous location in the public area of each registered, operating dry-cleaning facility.

(e) If a change in ownership of an operating dry-cleaning facility occurs, the new owner shall submit a new registration form not later than 30 days after assuming ownership. (Authorized by K.S.A. 1999 Supp. 65-34,143; implementing K.S.A. 1999 Supp. 65-34,145; effective Jan. 3, 1997; amended Dec. 22, 2000.)

**28-68-3. Performance standards.** (a) Storage and disposal of dry-cleaning wastes.

(1) Each owner or operator of a dry-cleaning facility that generates hazardous waste shall comply with the provisions specified in K.A.R. 28-31-1 through K.A.R. 28-31-4, with the following changes:

(A) Except as provided in paragraph (a)(2), the owner or operator of each dry-cleaning facility that is a small quantity generator as specified in K.A.R. 28-31-2(e), and that accumulates up to 25 kilograms of hazardous waste, shall treat the waste as follows:

(i) Either treat or dispose of the hazardous waste in an acceptable on-site facility, or ensure delivery to an off-site hazardous waste treatment, storage, or disposal facility, or to some other waste management facility approved by the department;

(ii) comply with 40 C.F.R. part 265, subpart I, as in effect on July 1, 1999 and hereby adopted by reference, except 265.176 and 265.178;

(iii) label or clearly mark each container and each tank in which hazardous waste is accumulated or stored with the words "Hazardous Waste"; and

(iv) clearly mark each container and each tank in which hazardous waste will be accumulated and stored for more than 72 hours with the date on which each period of accumulation begins. The date marking shall be in a place visible for inspection.

(B) Dry-cleaning wastewater shall not be

stored at a dry-cleaning facility for more than 60 days.

(2) Each owner or operator of an existing dry-cleaning facility that is a small quantity generator and accumulates up to 25 kilograms of hazardous waste shall comply with paragraphs (a)(1)(A)(ii) through (a)(1)(A)(iv) of this regulation.

(b) Prohibition of the discharge of dry-cleaning solvents and waste.

(1) The owner or operator of a dry-cleaning facility shall not discharge dry-cleaning solvents, dry-cleaning wastewater, or both, either directly or indirectly, into any sanitary sewer, storm sewer, or septic tank, or to the soil or waters of the state. The owner or operator of a dry-cleaning facility shall not discharge dry-cleaning waste into any underground tank.

(2) The owner or operator of a dry-cleaning facility shall not locate floor drains within any secondary containment structure required by paragraph (e)(1) of this regulation.

(c) The owner or operator of a dry-cleaning facility may evaporate dry-cleaning wastewater at the dry-cleaning facility at which it was generated if both of the following conditions are met:

(1) The evaporation unit is a heated unit or a nonthermal unit utilizing air atomization or misting, made of materials compatible with and impervious to the dry-cleaning wastewater being evaporated; and

(2) the dry-cleaning wastewater contains no free-phase dry-cleaning solvent. For the purposes of this paragraph, "free-phase dry-cleaning solvent" means dry-cleaning solvent that is not suspended or dissolved in the dry-cleaning wastewater.

(d) Air emission standards. Each owner or operator of a dry-cleaning facility using chlorinated dry-cleaning solvents shall comply with the provisions specified in K.A.R. 28-19-720, and K.A.R. 28-19-750 through K.A.R. 28-19-753.

(e) Dikes and secondary containment structures.

(1) Installation. Each owner or operator of a dry-cleaning facility shall install a dike or other secondary containment structure around each dry-cleaning unit and around each storage area for dry-cleaning solvent, dry-cleaning waste, or both. Each secondary containment structure shall be maintained in good condition.

(2) Construction materials.

(A) The materials used to construct each secondary containment structure shall be impervious



to and compatible with the dry-cleaning solvents and dry-cleaning wastes used or stored within the secondary containment structure.

(B) For any dry-cleaning unit using chlorinated dry-cleaning solvents, and any storage area for chlorinated dry-cleaning solvents, chlorinated solvent dry-cleaning wastes, or both, materials other than epoxy or steel may be used for the construction of the secondary containment structure only upon approval by the department. Departmental approval for the use of a material other than epoxy or steel shall be granted upon demonstration to the department that the material is as compatible with and impervious to dry-cleaning solvent as epoxy or steel.

(C) For any dry-cleaning unit using petroleum dry-cleaning solvents, and any storage area for petroleum dry-cleaning solvents, petroleum dry-cleaning solvent wastes, or both, materials other than epoxy, steel, or concrete may be used for the construction of the secondary containment structure only upon approval by the department. Departmental approval for the use of a material other than epoxy, steel, or concrete shall be granted upon demonstration to the department that the material is as compatible with and impervious to dry-cleaning solvent as epoxy, steel, or concrete.

(D) All sealant and all caulk used on each secondary containment structure shall be impervious to and compatible with the dry-cleaning solvent and dry-cleaning waste used or stored within the secondary containment structure.

(3) Storage capacity. Each secondary containment structure shall be capable of containing any leak, spill, or release of dry-cleaning solvents, dry-cleaning wastes, or both.

(4) Inspections. The owner or operator of each dry-cleaning facility shall inspect each secondary containment structure weekly.

(A) The owner or operator of each dry-cleaning facility shall repair each deficiency detected during an inspection not later than five calendar days after the deficiency is detected. The owner or operator may request an extension of this five-day time limit from the department.

(B) The owner or operator of each dry-cleaning facility shall keep a log of the following information and provide it to the department upon request:

(i) The dates of inspection for each secondary containment structure;

(ii) a brief description of each deficiency that is detected;

(iii) the date of repair of each deficiency; and  
(iv) a brief description of each repair.

(C) Each inspection and repair log shall be kept at the dry-cleaning facility for not less than five years after the log has been completed.

(f) Delivery of solvents.

(1) Chlorinated dry-cleaning solvents. All chlorinated dry-cleaning solvents shall be delivered to dry-cleaning units and solvent storage containers by means of either of the following:

(A) A closed, direct-coupled delivery system; or

(B) a technology determined by the department to provide protection of human health and the environment equivalent to or greater than that provided by direct-coupled delivery systems.

(2) Petroleum-based solvent. All petroleum-based solvents shall be delivered to dry-cleaning units and solvent storage containers according to the requirements of K.A.R. 22-7-9.

(g) Each owner or operator of a new dry-cleaning facility shall comply with this regulation at the time operations begin and thereafter. (Authorized by and implementing K.S.A. 1999 Supp. 65-34,143; effective Jan. 3, 1997; amended May 8, 1998; amended Dec. 22, 2000.)

**28-68-4. Removal of drycleaning solvents and drycleaning wastes from closed facilities.** Each owner or operator of a drycleaning facility which has ceased operation for 45 continuous days shall remove all drycleaning solvents and drycleaning wastes from the drycleaning facility not later than 45 days after the last day of operation.

(a) Each owner or operator shall dispose of all drycleaning wastes in accordance with K.A.R. 28-68-3, subsection (a).

(b) Any owner or operator may request from the department a written extension of the 45-day time limit established in subsection (a). (Authorized by and implementing K.S.A. 1995 Supp. 65-34,143; effective Jan. 3, 1997.)

**28-68-5. Application for ranking of contaminated drycleaning site.** Any contaminated drycleaning site may be ranked by the department to establish priorities for fund expenditures based on information the department has at the department's disposal, information contained in an application to the department, or both. If an applicant desires to have a contaminated drycleaning site ranked that has not been ranked previously, the applicant shall submit to the department a

completed, signed application on a form provided by the department.

(a) If the applicant is not the real property owner, the applicant shall provide proof that the real property owner has been notified of the application.

(b) If the property is leased, and the applicant is not the lessee, the applicant shall provide proof that the lessee has been notified of the application.

(c) The application shall contain the following information, as well as all other known information concerning environmental contamination at the contaminated drycleaning site;

(1) The applicant shall provide an analysis of one ground water sample which demonstrates that a release has occurred. The sample shall be taken as follows:

(A) from a water supply well;

(B) from a monitoring well;

(C) using hydraulic push probe sampling equipment; or

(D) using some other sample collection device approved by the department. Departmental approval for use of an alternate sampling device shall be granted upon demonstration that the alternate sampling device collects samples of quality equal to or greater than samples collected as described in paragraphs (A) through (C).

(E) The sample shall be collected and analyzed not more than one year prior to the day the application is received by the department. The analysis shall be performed by a laboratory which is certified for such analyses by the department. If the application is to accompany a request for reimbursement, as set forth in K.A.R. 28-68-7, the sample analysis indicating the highest level of contamination ever recorded at the site shall be submitted.

(F) With prior approval from the department, an analysis of a representative soil sample may be substituted for the groundwater sample analysis.

(2) Each applicant shall submit, if available, one of the following:

(A) a geologic well log or logs from at least one monitoring or supply well; or

(B) hydrogeologic information from the contaminated drycleaning site where the ground water sample or soil sample was collected.

(3) The applicant shall state the distance to the nearest known private domestic well, public water supply well, surface water, or other receptor.

(4) The applicant shall provide a description of

the present use of the ground water in the area where the sample was collected.

(d) Any applicant may request that the department provide a written exemption from submittal of certain information set forth in subsection (c). An exemption may be granted by the department if the information:

(1) is not necessary for ranking; or

(2) is readily available to the department.

(e) The information set forth in subsection (c) shall be used by the department to rank the contaminated drycleaning site in relation to other contaminated drycleaning sites to aid in establishing priorities for fund expenditures as set forth in K.A.R. 28-68-8.

(f) The reasonable, direct costs incurred by the applicant to collect the information required by subsection (c) only shall be credited to payment of the deductible set forth in K.A.R. 28-68-6. On request by the department, the applicant shall furnish invoices or other supporting information containing sufficient detail for the department to determine that the costs were incurred to collect the information and that the costs were paid.

(g) The completed application shall be reviewed and a determination of eligibility shall be made by the department.

(h) A written notice of the determination of eligibility shall be sent by the department to the applicant as soon as a determination is made. If the site is determined ineligible for the fund, the notice of the determination shall state the reason or reasons for ineligibility. (Authorized by and implementing K.S.A. 1995 Supp. 65-34,143; effective Jan. 3, 1997.)

**28-68-6. Deductible payment.** On initiation of corrective action by the department at a contaminated dry-cleaning site, the applicant shall pay to the department the applicable deductible, minus the reasonable, direct costs incurred by the applicant to collect the application information as specified in K.A.R. 28-68-5(f). The deductible shall be \$5,000.00 for each dry-cleaning facility that has contributed to the contamination of the contaminated dry-cleaning site. Under the conditions specified in K.S.A. 65-34,148, and amendments thereto, the owner of any property that includes an existing or former dry-cleaning facility may be responsible for up to 100% of the costs of corrective action attributable to the owner. (Authorized by K.S.A. 1999 Supp. 65-34,143; imple-

menting K.S.A. 1999 Supp. 65-34,148; effective Jan. 3, 1997; amended Dec. 22, 2000.)

**28-68-7. Reimbursement of corrective action costs.** (a) Reimbursement. Any applicant may request reimbursement from the fund for the applicant's corrective action costs, minus the deductible set forth in K.S.A. 1995 Supp. 65-34,148, subsection (i), for work performed at a contaminated drycleaning site which is determined to be eligible for the fund.

(1) Reimbursable costs shall be limited to costs for corrective action approved by the department, including direct costs incurred by the applicant. Each applicant shall substantiate reimbursable costs with contractor and subcontractor invoices or other reasonably reliable documentation.

(2) For each contaminated drycleaning site, reimbursement for corrective action costs incurred prior to July 1, 1995, shall be limited to \$100,000.00, minus the applicable deductible.

(3) Reimbursement for corrective action costs incurred on or after July 1, 1995, for any contaminated drycleaning site shall be limited, in any year, to 10 percent of the fund's income for the previous fiscal year. The applicable deductible shall be subtracted from the first-year reimbursement.

(4) Each eligible site shall receive priority for reimbursement according to the ranking of the contaminated drycleaning sites set forth in K.A.R. 28-68-8, subsection (b).

(b) Application for reimbursement.

(1) If an application for ranking has not been submitted previously to the department, the applicant shall follow the application procedure set forth in K.A.R. 28-68-5.

(2) Each applicant shall submit a signed request for reimbursement to the department on a form prepared by the department.

(3) If the applicant is not the real property owner, the applicant shall provide proof that the real property owner has been notified of the request for reimbursement.

(4) If the property is leased, and the applicant is not the lessee, the applicant shall provide proof that the lessee has been notified of the request for reimbursement.

(5) Each request for reimbursement shall contain:

(A) a copy of the notice of eligibility from the department;

(B) the name and address of the entity or entities to receive the reimbursement;

(C) a copy of all work plans generated to perform the corrective action for which reimbursement is sought;

(D) a copy of all reports generated during the corrective action;

(E) a copy of the department approval documents for corrective action at the contaminated drycleaning site; and

(F) a copy of contractor and subcontractor invoices or other reasonably reliable documentation for work performed prior to July 1, 1995, and approved by the department.

(i) Each applicant shall provide invoices or other reasonable reliable documentation with sufficient detail and supporting information to document that the costs were incurred to perform work discussed in the work plans, corrective action plan, or other work approved by the department.

(ii) Each applicant shall be required to submit to the department copies of cancelled checks, if available, showing payment for the work.

(iii) If cancelled checks are not available, each applicant shall be required to submit to the department an affidavit of expenditures and supporting documentation showing that the costs were incurred and paid to perform work approved by the department. The form for the affidavit of expenditures shall be provided by the department. (Authorized by K.S.A. 1995 Supp. 65-34,143; implementing K.S.A. 1995 Supp. 65-34,148; effective Jan. 3, 1997.)

**28-68-8. Prioritization of fund expenditure.** Each work item approved by the department for contaminated drycleaning sites shall be prioritized to ensure that money from the fund is available for essential corrective action tasks.

(a) Priority shall be given to contaminated drycleaning sites requiring emergency action. Emergency status may be established by the department under any of the following conditions:

(1) when a public water supply well or one or more domestic wells are contaminated, or are threatened with contamination levels above state or federal drinking water limits, and no alternative water source is readily available;

(2) when surface drinking water or a water supply intake is contaminated above acceptable limits, as defined by the department, or contamina-

tion is imminent, and no alternative water source is readily available; or

(3) when a high probability exists for direct human exposure to or contact with highly contaminated waste, soil, air, or water.

(b) Each contaminated drycleaning site not requiring emergency action shall be ranked by the department according to the risk to human health and the environment presented by the contaminants at the contaminated drycleaning site. Contaminated drycleaning sites for which an application is submitted for reimbursement of corrective action costs incurred prior to July 1, 1995 shall be ranked separately from other contaminated drycleaning sites.

(c) The appropriateness of corrective action alternatives for each contaminated drycleaning site shall be evaluated by the department according to the following criteria.

(1) Preference shall be given to the corrective action alternative which is most cost effective, considering both short-term and long-term costs, while adequately protecting human health and the environment.

(2) The incremental cost of the chosen corrective action shall be justified and reasonably related to the incremental risk reduction benefits of the corrective action. (Authorized by and implementing K.S.A. 1995 Supp. 65-34,143; effective Jan. 3, 1997.)

**28-68-9. Determining completion of corrective action.** A determination of the level at which corrective action shall be considered complete shall be made by the department using the following criteria.

(a) The factors used in prioritizing fund expenditure as set forth in K.S.A. 1995 Supp. 65-34,143, section (d) shall be considered by the department.

(b) The characteristics of the contaminated drycleaning site shall be evaluated by the department.

(c) State and federal drinking water standards may be considered by the department in setting corrective action levels. A determination that corrective action levels less stringent than state water quality standards will apply at a contaminated drycleaning site may be made by the department based on:

- (1) an evaluation or risk;
- (2) the effectiveness of available technology; and

(3) the cost of implementation.

(d) Any other factors which the department considers relevant may be used in determining the level at which corrective action shall be considered complete. (Authorized by and implementing K.S.A. 1995 Supp. 65-34,143; effective Jan. 3, 1997.)

## Article 70.—CANCER REGISTRY

**28-70-1. Definitions.** (a) “Adult care home” has the meaning specified in K.S.A. 39-923, and amendments thereto.

(b) “Cancer registry director” means the person at the university of Kansas medical center, department of preventive medicine and public health, who is authorized by the secretary to administer the operations of the cancer registry of the state of Kansas.

(c) “Clinic” means an establishment that meets the following conditions:

(1) Has an organized medical staff of one or more physicians;

(2) consists of a permanent facility that is equipped and operated primarily for the purpose of diagnosing and treating patients; and

(3) does not provide services or other accommodations for any patient to stay for more than 24 hours.

(d) “Confidential data” has the same meaning as in K.S.A. 65-1,168, and amendments thereto.

(e) “Hospice” means a public agency or private organization or subdivision of a public agency or private organization that is primarily engaged in providing care to terminally ill individuals.

(f) “Registry” means the cancer registry of the state of Kansas, as established by K.S.A. 65-1,169, and amendments thereto. (Authorized by and implementing K.S.A. 2004 Supp. 65-1,169; effective Feb. 27, 1998; amended Aug. 5, 2005.)

**28-70-2. Reporting requirements.** (a) Each administrator of a hospital, an ambulatory surgery center, a radiology oncology center, or a pathology laboratory shall, within six months of the date of diagnosis, report to the registry each case of cancer diagnosed or treated, unless exempted under subsection (d) of this regulation.

Each report shall provide all required information available in the medical or administrative records that are under the direct control of the reporting administrator. No administrator shall be required to contact the patient, the patient’s family, or another health care provider to obtain ad-



ditional information not contained in the medical or administrative records.

(b) Each person who is either licensed to practice medicine and surgery or licensed to practice dentistry and who practices in a clinic or physician's office and each administrator of a hospice or adult care home shall provide the following to the registry:

(1) If used to confirm each cancer diagnosis, a list of in-state and out-of-state pathologists, or pathology laboratories and dermatopathologists; and

(2) for each patient for whom a cancer diagnosis has been confirmed, pathologically or clinically, a list that includes the name, social security number, date of birth, and cancer site. The social security number shall be used only for confirmation of patient identity.

(c) Upon receipt of any written request for information from the registry regarding a patient, each reporting party specified in subsection (a) or (b) shall provide the requested information that is contained in medical or administrative records under the direct control of the reporting party. The requested information may consist of either of the following:

Any information specified in subsection (e), even if the patient's cancer has not been diagnosed or treated by the hospice or adult care home or by the health care provider or licensee specified in subsection (a) or (b); or annual follow-up information, including tumor recurrence and follow-up treatment.

(d) The reports specified in this regulation shall not be required for the following types of cancer:

(1) Squamous cell carcinoma of the skin, unless located on a lip of the face or in the genital area, or unless spread beyond local tissues at the time of diagnosis;

(2) basal cell carcinoma of the skin, unless located on a lip of the face or in the genital areas, or unless spread beyond local tissues at the time of diagnosis; and

(3) carcinoma in situ of the uterine cervix.

(e) Each report from any reporting party specified in subsection (a) or (b) shall include the following information, if available:

(1) Patient identifiers and demographics;

(2) cancer diagnosis, including the cancer site and histology;

(3) personal and family history;

(4) vital status, including the date of death and cause of death, if applicable;

(5) cancer-related treatment information;

(6) follow-up information, including the date of last contact with the patient; and

(7) third-party payer information.

(f) Each report to the registry shall be submitted in one of the following formats:

(1) American standard code for information interchange (ASCII) file in the North American association of central cancer registries (NAACCR) format;

(2) electronic or paper forms provided by the registry;

(3) any other format equivalent to any format specified in paragraph (f)(1) or (2) that is acceptable to the cancer registry director.

(g) All data transferred to the registry shall be secure and confidential.

(1) All paper data transferred to the registry shall be sealed in an envelope marked "CONFIDENTIAL" and addressed to the cancer registry director.

(2) Electronic data transfer may be made by one of the following means:

(A) Diskette mailed in a sealed envelope marked "CONFIDENTIAL" and addressed to the cancer registry director; or

(B) electronic transmission, if encrypted, according to prior instructions from the cancer registry director. (Authorized by K.S.A. 2004 Supp. 65-1,169; implementing K.S.A. 2004 Supp. 65-1,168 and 65-1,169; effective Feb. 27, 1998; amended Aug. 5, 2005.)

**28-70-3. Use and access.** (a) For purposes of ascertaining the accuracy and completeness of cancer data, the medical diagnosis of each person cared for by any health care provider or licensee specified in K.A.R. 28-70-2(a) or (b) by any hospice or adult care home and the medical or administrative records of any person with cancer may be reviewed by the cancer registry director. Each review shall be made by prearrangement with the appropriate administrator or licensee. Pursuant to K.S.A. 65-1,169 and amendments thereto, a copy of any death certificate may be requested by the cancer registry director from the secretary to ensure the completeness of cancer data and to achieve record closure.

(b) Each person who requests access to confidential registry data shall submit a written request to a review panel, as specified in K.S.A. 65-1,173, and amendments thereto. If the person meets the requirements specified in K.S.A. 65-

1,172 and amendments thereto, the confidential data may be released by the review panel. (Authorized by K.S.A. 2004 Supp. 65-1,169; implementing K.S.A. 65,1,171, 65-1,172, and 65-1,173; effective Feb. 27, 1998; amended Aug. 5, 2005.)

#### **Article 71.—VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM**

**28-71-1. Definitions.** For the purposes of these regulations, the following definitions shall apply. (a) “Adjacent property” means property that is impacted by contamination from an off-property source or property that is contiguous to a contaminated property.

(b) “Anthropogenic levels” means concentrations of chemicals or substances that are present in the environment due to human activity.

(c) “Class one contamination (Class I)” means that suspected or confirmed contamination is determined to exist on the eligible property, and the eligible property is not a source of contamination or is located adjacent to a property with a known source of contamination.

(d) “Class two contamination (Class II)” means that suspected or confirmed soil contamination is determined to exist on the eligible property, there is no known or suspected soil contamination emanating off the eligible property, and there is no known or suspected ground-water contamination.

(e) “Class three contamination (Class III)” means that suspected or confirmed soil or ground-water contamination, or both, is determined to exist on the eligible property, and there is no known or suspected soil or groundwater contamination that has migrated off the eligible property.

(f) “Class four contamination (Class IV)” means that suspected or confirmed soil or ground-water contamination, or both, is suspected or is determined to exist on and off the eligible property.

(g) “Days” means calendar days unless otherwise specified. Documents due on the weekend or a holiday shall be submitted on the first working day after the weekend or holiday.

(h) “Enforcement action” means an administrative or judicial claim made by a governmental agency pursuant to state, federal, or common law against the property described in the application, which enforcement action is based upon the contaminants sought to be cleaned up under this program.

(i) “Environmental site assessment” means an investigation of a property, conducted by a qualified environmental professional, that identifies and defines recognized environmental conditions at the property.

(j) “Hazard index value” means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both.

(k) “Hazard quotient” means the ratio of a single substance exposure level over a specified time period to a reference dose for that substance derived from a similar exposure period.

(l) “Institutional control” means a legal mechanism that limits access to or use of property, or warns of a hazard, the purpose of which is to ensure the protection of human health and the environment.

(m) “Maximum contaminant level (MCL)” means the maximum permissible level of a contaminant in water that is delivered to any user of a public water system as described in K.A.R. 28-15-13, subsections (b) and (c).

(n) “Naturally occurring levels” means ambient concentrations of chemicals or substances present in the environment that are typical of background levels near the eligible property when not affected by the identified contamination source.

(o) “Nonresidential property” means any property that does not exclusively meet the definition of residential property.

(p) “Person” means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state agency, unit of local government, school district, federal agency, tribal entity, interstate body, or other legal entity.

(q) “Potable water” is as defined in K.A.R. 28-16-28b, paragraph (b)(32).

(r) “Qualified environmental professional” means an individual who demonstrates to the satisfaction of the department that the individual, through academic training, occupational experience, reputation, or other credentials, can objectively conduct one or more aspects of an environmental site assessment.

(s) “Remedial action” means those actions taken to address the effects of a release of a contaminant, so that it does not cause a significant risk to present or future public health or welfare, or to the environment.

(t) “Remediation” means the act of imple-

menting, operating, and maintaining a remedial action.

(u) "Residential property" means any property currently used or proposed for use as one of the following:

(1) A residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or

(2) a public use area, including a school, educational center, day care center, playground, unrestricted outdoor recreational area, or park.

(v) "Voluntary cleanup and property redevelopment program (VCPRP)" means the implementation of the voluntary cleanup and property redevelopment act, as defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, by the department.

(w) "Voluntary party" means an applicant whose property is determined to be eligible for the voluntary cleanup and property redevelopment program. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,164 through 65-34,172; effective June 26, 1998.)

**28-71-2. Applicant.** An applicant shall include a person who has title, control, or access to the property and is one of the following:

(a) A person who owns property;

(b) a person who operates a facility located on the property;

(c) a person who previously owned, operated, or otherwise controlled activities on the property;

(d) a prospective owner of property;

(e) a prospective operator of a facility located on property;

(f) a person or generator of hazardous or solid waste who by contract, agreement, or otherwise, directly or indirectly, arranged for the disposal of contaminants at the property;

(g) a person who legally controls the property; or

(h) any unit of government that acquired title or control of the property involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,164; effective June 26, 1998.)

**28-71-3. Eligibility determination.** (a) The property described in the application shall contain an actual, threatened, or suspected release of a contaminant or be impacted or threat-

ened by contaminants from an off-property source.

(b) Properties that may be eligible for application to the voluntary cleanup and property redevelopment program include the following:

(1) Properties that have been assessed by the United States environmental protection agency, its contractors and agents, and the department, if the property meets the additional criteria defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, and these regulations;

(2) contaminated properties that are currently under an existing department order or agreement, upon completion of the actions required by the department order or agreement, if the property meets the additional criteria as defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, and the determination of completion of the actions required by the order or agreement shall be made by the department;

(3) portions of a larger property that have or require a resource conservation and recovery act (RCRA) permit, but these portions do not require a permit in accordance with RCRA, which contains a corrective action component, as determined by the department, if the property meets the additional criteria as defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto;

(4) portions of a larger property that includes oil and gas activities regulated by the state corporation commission, but the specific portion is not regulated by the state corporation commission, if the property meets the additional criteria defined in K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto; and

(5) contaminated properties that are not statutorily excluded. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,164; effective June 26, 1998.)

**28-71-4. Application process.** (a) Each applicant shall submit to the department a complete application consisting of the following:

(1) An application form, provided by the department;

(2) a nonrefundable application fee of \$200.00; and

(3) all documentation that supports the application, including environmental assessments, investigation reports, or both.

(b) Determination of whether or not the property defined in the application is eligible for par-

ticipation in the program shall be made by the department, pursuant to K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto. The applicant shall be notified by the department in writing of the determination, not more than 60 days after the department receives a complete application or reapplication.

(c) In the event that the initial application is determined by the department to be incomplete, a written notice stating why the application is incomplete shall be returned to the applicant by the department. The applicant shall submit a revised application package to address the concerns of the department.

(d) In the event the department determines that the revised application package is still incomplete, written notice shall be provided by the department to the applicant, who shall submit a second application fee of \$200.00 and a revised application package. (Authorized by and implementing K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,164 and 65-34,165; effective June 26, 1998.)

**28-71-5. Classification determination.**

(a) An initial classification of contamination for eligible properties shall be determined by the department.

(b) For the purposes of this regulation, properties shall be placed into one of four contamination classes, as defined in K.A.R. 28-71-1.

(c) The department's classification determination shall be conveyed to the voluntary party with written notification of eligibility.

(d) The contamination classification of an eligible property shall be determined by the department based on the following criteria:

(1) The application and associated documentation that supports the voluntary party's application;

(2) review of available technical bulletins and scientific documents describing the geology and geohydrology of the property and surrounding area; and

(3) scientific information relating to the toxicity, mobility, persistence, and other characteristics of the contaminants suspected or identified at a property.

(e) For the purposes of selecting an appropriate level of work necessary to achieve the objectives as defined in K.A.R. 28-71-9, determination of which contamination classification an eligible

property falls into shall be made by the department.

(f) Throughout the time the eligible property is participating in the program, the contamination classification of an eligible property may be adjusted by the department to a lower contamination classification or a higher contamination classification, depending on additional information obtained. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,165 and 65-34,166; effective June 26, 1998.)

**28-71-6. Voluntary agreement.** (a) Upon departmental approval of the application for the voluntary cleanup and property redevelopment program, the voluntary party shall enter into a voluntary agreement with the department. The voluntary agreement shall be developed by the department and submitted to the voluntary party for signature. The voluntary agreement shall set forth all of the terms and conditions for implementation of the work anticipated in the program.

(b) Oversight, management, and review activities pertaining to the property shall not be commenced by the department until the voluntary agreement is signed by both the department and the voluntary party.

(c) The voluntary agreement shall require the voluntary party to deposit with the department an initial amount, not to exceed \$5,000.

(d) The voluntary agreement shall require the voluntary party to provide the department access to the property at all reasonable times, upon reasonable notice to the voluntary party during all the activities conducted under K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,165; effective June 26, 1998.)

**28-71-7. Initial deposit and reimbursement.** (a) The initial deposit made by the voluntary party, based on the contamination classification of the property, shall be one of the following amounts.

(1) Class I contamination shall not exceed \$1,000, based upon actual billing by the department.

(2) Class II contamination shall be \$3,000.

(3) Class III contamination shall be \$4,000.

(4) Class IV contamination shall be \$5,000.

(b) Oversight shall be performed by the department or its consultants or contractors. This oversight shall include the following:



(1) The review of documents, studies, and test results;

(2) any necessary administrative decision making by the department;

(3) collection of split samples, laboratory analysis, and sampling supplies;

(4) travel;

(5) per diem;

(6) verification activities; and

(7) associated indirect costs.

(c) The purpose of oversight of a voluntary party's performance by the department shall be to assure that the work is consistent with, and meets the requirements of, K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto; applicable guidance, policies and procedures; and these regulations. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,165; effective June 26, 1998.)

**28-71-8. Environmental assessments.** (a) Environmental assessments as defined in these regulations and prepared by a qualified environmental professional shall be accepted by the department.

(b) An environmental assessment shall include the following information:

(1) The legal description of the site and a map identifying the location, boundaries, and size of the property;

(2) the physical characteristics of the site and areas contiguous to the site, including the location of any surface water bodies and groundwater aquifers;

(3) the location of any water wells located on the property or in an area within a one-half mile radius of the property and a description of the use of the those wells;

(4) the operational history of the property, based upon the best efforts of the applicant and the current use of areas in the vicinity of the property;

(5) the present and proposed uses of the property;

(6) information concerning the nature and extent of any contamination;

(7) information on releases of contaminants that have occurred at the site, including any environmental impact on areas in the vicinity of the property;

(8) any sampling results or other data that characterizes the soil, groundwater, or surface water on the property; and

(9) a description of the human and environmental exposures to contamination at the property, based upon the property's current use and any future use proposed by the property owner as approved by the local zoning authority. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,165, 65-34,166, and 65-34,170; effective June 26, 1998.)

**28-71-9. Voluntary cleanup work plans and reports.**

(a) Upon signature of the voluntary agreement by the voluntary party and the department, each environmental investigation report, assessment report, or both, submitted by the voluntary party shall be reviewed by the department. Determination of whether or not the investigation, assessment, or both, meet all the following objectives shall be made by the department.

(1) Sources for contaminants have been adequately identified and investigated.

(2) The vertical and horizontal extent of contaminants has been determined.

(3) Human health and environmental receptors have been identified.

(4) Potential risks and impacts to receptors have been evaluated.

(5) Quality assurance and quality control have been maintained.

(b) Based on the reports submitted by the voluntary party, a determination as to any required actions shall be made by the department.

(c) Determination that further investigation is necessary to meet the objectives as defined in K.A.R. 28-71-9, subsection (a) may be made by the department. If this determination is made, the voluntary party shall submit to the department for review and approval a work plan for investigation. The work plan shall be based on a scope of work provided by the department. The work plan shall be reviewed by the department, and written comments for revisions or approval shall be provided by the department. After approval of the work plan by the department, the following actions shall occur.

(1) The voluntary party shall implement the department-approved work plan for investigation.

(2) The voluntary party shall document and submit the results of the investigation in a report, and the report shall be submitted to the department for review.

(3) The report shall be reviewed by the department, and written comments for revision or approval shall be provided by the department.

(4) A determination as to any further required actions based on the results of the approved investigation report shall be made by the department.

(d) If it is determined that remediation is necessary to address, mitigate, or both, the risks posed by the property, the voluntary party shall submit to the department for review and approval a proposal for remediation. The proposal for remediation shall be based on a scope of work provided by the department. The proposal for remediation shall meet the following objectives:

(1) Be protective of human health and the environment for documented present and future land uses;

(2) meet applicable state standards and guidelines or the results of a risk analysis approved by the department;

(3) evaluate remedial alternatives that are proven reliable and are economically and technically feasible by completing the following activities:

(A) Comparing a minimum of two alternatives, not including the “no action” alternative;

(B) documenting the ability of each remedial alternative to attain a degree of cleanup and control of contaminants established by the department; and

(4) provide a description and evaluation of the voluntary party’s proposed remedial alternative.

(e) The proposal for remediation shall be reviewed by the department, and written comments for either revision or approval shall be provided by the department within 45 days of submittal, unless the department extends the time for review to a date certain.

(f) If the department approves the proposal for remediation, then a cleanup plan shall be submitted by the applicant. The cleanup plan shall include the following:

(1) A description of all tasks necessary to implement the preferred remedial alternative;

(2) preliminary or final design plans and specifications of the preferred remedial alternative;

(3) a description of all necessary easements and permits required for implementation of the cleanup;

(4) an implementation schedule;

(5) a plan to monitor the effectiveness of the cleanup during implementation; and

(6) a verification plan to document that cleanup objectives have been achieved.

(g) The cleanup plan shall be reviewed by the

department, and written comments for either revision or acceptance shall be provided by the department within 30 days of submittal, unless the department extends the time for review to a date certain. If the department accepts the cleanup plan, a notice of the department’s determination shall be published by the department, in accordance with K.A.R. 28-71-12.

(h) The cleanup plan shall be approved by the department if the plan is publicly accepted and if the plan attains a degree of cleanup and control of contaminants that are protective of human health and the environment.

(i) If the cleanup plan is not approved by the department, the voluntary party shall be provided with the reasons for denial, in writing, by the department.

(j) Upon receipt of written assurance that the cleanup plan has been completed, a verification sampling program, approved by the department, shall be conducted by the department and the voluntary party, to confirm that the property has been addressed as described in the cleanup plan. Conducting verification activities, allowing the voluntary party to conduct these activities, or requesting that both the department and voluntary party collectively conduct these activities may be selected by the department. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,166, 65-34,167, and 65-34,168; effective June 26, 1998.)

**28-71-10. “No further action” determinations.** (a) For the purposes of this regulation, the term “no further action” determination means that the department has determined, pursuant to K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, that no further action is necessary at the property.

(b) The “no further action” determination by the department shall be made on properties where either of the following applies.

(1) Contamination was detected during the environmental assessment, department-approved investigation, or both, but contamination levels present no significant risk to human health and the environment, and those levels are less than applicable federal or state standards.

(2) The property has been remediated, as approved by the department, in a cleanup plan and confirmed with verification sampling as defined in K.A.R. 28-71-9.

(c) “No further action” determinations shall

contain the appropriate disclaimers and limitations for the specific circumstances at the property.

(d) A “no further action” determination may be issued by the department with the following conditional terms:

(1) To allow for long-term monitoring of contamination; or

(2) to provide for further action in the event that department-approved cleanup levels are exceeded at property boundaries; or

(3) both paragraphs (d)(1) and (d)(2).

(e) A “no further action” determination may be issued by the department to properties when no contamination is indicated, based on a department-approved application, environmental assessment, or investigation reports submitted by the voluntary party. The environmental assessment or investigation shall document that the past and current use of the property has not contributed to contamination of soils, surface water or groundwater.

(f) A “no further action” determination may be issued by the department to contaminated, adjacent properties if the property that is the source of the contamination has applied and been accepted into the voluntary cleanup and property redevelopment program or if the property is being addressed by the department or the United States environmental protection agency through another program. The following requirements shall be met for those properties qualifying for a “no further action” determination under this subsection.

(1) The owner or operator, or both, of the adjacent property shall submit a complete application to the department, including environmental assessments and investigations.

(2) Determination that the contamination on the subject property resulted from an off-property source shall be made by the department.

(3) The department determines that there is no on-site source of contamination, including soil contamination.

(4) The department determines that the likely source of contamination exists nearby and its location may allow contamination to migrate onto the subject property.

(5) The owner or operator, or both, of the adjacent property documents that the past and current use of the property would not have contributed to the contamination of soils, surface water or groundwater.

(6) The owner or operator, or both, of the ad-

acent property agrees to fully cooperate and allow reasonable access for the investigation and cleanup of the contamination for the source property. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,169; effective June 26, 1998.)

**28-71-11. Remedial standards and remedial actions.** (a) All remedial alternatives performed by the voluntary party and approved by the department shall attain a degree of cleanup, control, or both, of contaminants that ensures protection of human health and the environment.

(b) All cost-effective remedial actions to restore the environment to conditions before its altered state, including innovative technologies and natural processes, shall be considered by the department if the protection of human health and the environment is maintained, the future degradation of the natural source is minimized, and the movement of contaminants is controlled.

(c) Responsibility for reviewing and approving the approach and final selection of cleanup levels shall rest with the department. The voluntary party may select any one of the following three approaches to determine cleanup levels for the property:

(1) Department-approved methods to determine background levels;

(2) department-established risk-based levels; or

(3) a site-specific, risk-based analysis conducted by the voluntary party or the department, based on department-approved formulas, exposure parameters, and department-approved land use scenarios.

(d) The selection of cleanup levels shall be based on the present and proposed future uses of the property and surrounding properties. Land use shall include two general categories: residential and nonresidential.

(e) Multiple media, exposure pathways, and contaminants shall be taken into account during the determination of cleanup levels.

(f) Existing and applicable federal or state standards shall be considered by the department during the determination of cleanup levels.

(g) Institutional controls that restrict the use of a property may be required by the department to ensure continued protection of human health and the environment.

(1) Institutional controls for the property shall not be proposed as a substitute for evaluating re-

medial actions that would otherwise be technically and economically practicable.

(2) Institutional controls for the property that are approved by the department shall be considered as remedial actions.

(3) Institutional controls for the property shall be described in a restrictive covenant approved by the department, executed by the property owner, and recorded with the register of deeds for the county in which the property is located. These restrictive covenants shall remain in effective and be binding on the owner's successors and assignees until approved otherwise by the department in writing.

(h) Soil cleanup levels and the depths to which the cleanup levels shall apply shall be based on human exposure, the present and proposed uses of the property, the depth of the contamination, and the potential impact to groundwater, surface water, or both, and any other risks posed by the soil contamination to human health and environment. One of the following approaches to soil cleanup shall be selected by the voluntary party and approved by the department.

(1) In the event that naturally occurring levels of an individual contaminant in the soil exceed the cancer risk level of  $1 \times 10^{-6}$ , one in 1,000,000, or a hazard index value of 1.0, then the background level may be the cleanup level.

(2) In the event that anthropogenic levels of a contaminant in soil exceed the cancer risk level of  $1 \times 10^{-6}$ , one in 1,000,000, or a hazard index value of 1.0, then a  $1 \times 10^{-5}$ , one in 100,000 cancer risk level, or a level corresponding to a hazard index value equal to 1.0 may be used as the cleanup levels.

(3) A property-specific risk analysis performed by the voluntary party in accordance with the department's scope of work shall be used to determine a chemical-specific cleanup level of less than the cancer risk level of  $1 \times 10^{-4}$ , one in 10,000, or a hazard index value equal to 1.0.

(i) Property-specific cleanup levels shall be determined by the department for contaminants for which there is insufficient toxicological evidence to support a regulatory standard for risk-based cleanup levels or for nontoxic contaminants for which cleanup is required as a result of other undesirable characteristics of those contaminants. These levels shall be based on the following:

(1) The ability of the impacted soil to support vegetation representative of unimpacted properties in the vicinity of the eligible property; and

(2) the potential of the contaminant to impact and degrade groundwater, surface water, or both, through infiltration or runoff.

(j) When there are multiple contaminants in the soil, the cleanup level of each contaminant shall not allow the cumulative risks posed by the contaminants to exceed a cancer risk level of  $1 \times 10^{-4}$ , one in 10,000, or a hazard index value of 1.0.

(k) The department shall approve soil cleanup levels to insure that migration of contaminants in the soil shall not cause the cleanup levels established for groundwater, surface water, or both, to be exceeded.

(l) Groundwater cleanup levels shall be based on the most beneficial use of the groundwater considering present and proposed future uses. The most beneficial use of the groundwater is for a potable water source, unless demonstrated otherwise by the voluntary party and approved by the department. The most beneficial use of the groundwater shall be determined by the department based on available existing documentation, as well as documentation provided by the voluntary party.

(m) Groundwater potentially or actually used as a potable water source shall require maximum protection in determining cleanup levels.

(n) The department shall approve cleanup levels that prevent additional degradation of the groundwater caused by contaminated migration and that encourage remedial actions to restore contaminated groundwater to the groundwater's most beneficial use.

(o) One or a combination of the following approaches to groundwater cleanup shall be selected by the voluntary party and approved by the department.

(1) In the event that natural occurring levels of an individual contaminant in groundwater exceed the cancer risk level of  $1 \times 10^{-6}$ , one in 1,000,000, or a hazard index value of 1.0, then the background level may be the cleanup level.

(2) In the event that anthropogenic levels of an individual contaminant in groundwater exceed the cancer risk level of  $1 \times 10^{-6}$ , one in 1,000,000, or a hazard index value of 1.0, then the maximum contaminant levels (MCLs) established by the federal government or a cancer risk level of  $1 \times 10^{-5}$ , one in 100,000, or a level corresponding to a hazard index value equal to 1.0 shall be the cleanup level.

(3) In the event that the chemical-specific maximum contaminant levels (MCLs) are not appli-



cable, a property-specific risk analysis performed by the voluntary party in accordance with the department's scope of work shall be used to determine a chemical-specific cleanup level of less than the cancer risk level of  $1 \times 10^{-4}$ , one in 10,000, or a hazard index value equal to 1.0.

(p) When the need for cleanup of a contaminant may be predicated on characteristics of that contaminant other than toxicity, including the contribution of an undesirable taste or odor, or both, the site-specific cleanup level as determined by the department or secondary MCLs shall be used as cleanup levels for contaminants for which insufficient toxicological evidence has been gathered to support a regulatory standard for risk-based cleanup levels or nontoxic contaminants. These levels shall be based on the aesthetic quality and usability of the groundwater, surface water, or both, for the present and proposed future use.

(q) When there are multiple contaminants in the groundwater, the cleanup level of each contaminant shall be such that the cumulative risks posed by the contaminants shall not exceed a cancer risk level of  $1 \times 10^{-4}$ , one in 10,000, or a hazard index value of 1.0.

(r) Surface water cleanup levels shall meet the Kansas surface water quality standards, as defined in K.A.R. 28-16-28b, et seq. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,167 and 65-34,168; effective June 26, 1998.)

**28-71-12. Public notification and participation.** (a) When a cleanup plan has been accepted by the department, and after consultation with the applicant, a notice of the department's acceptance shall be published by the department in a local newspaper of general circulation in the area affected. Notice shall be provided by one or more of the following methods:

- (1) Display advertisement;
  - (2) legal notice; or
  - (3) published notice with direct notice to any other appropriate entities, including appropriate units of local government.
- (b) The cleanup plan shall be made available by the department to the public upon request.
- (c) All public notices shall indicate the public comment period for the cleanup plan. The comment period shall extend no fewer than 15 days from the date of posting the notice.
- (d) The public shall have the opportunity during the public comment period to submit to the

department written comments regarding the cleanup plan. Written response shall be made by the department to those written comments from the public that directly concern the cleanup plan.

(e) Following the 15-day public comment period, a public information meeting may be held by the department if, in the department's judgment, the public comments on the voluntary cleanup plan submitted warrant a meeting or the voluntary party requests a meeting.

(f) The public information meeting shall provide the public with information about relevant activities at the property associated with the voluntary cleanup and property redevelopment program. Public information meetings shall be attended by a member of the department and the voluntary party or designated representative, or both.

(g) A notice to the city, the county, or both, of the public information meeting shall be provided by the department.

(h) Upon completion of the public notification and participation process, a determination to approve or disapprove the cleanup plan shall be made by the department. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,168; effective June 26, 1998.)

## **Article 72.—RESIDENTIAL CHILDHOOD LEAD POISONING PREVENTION PROGRAM**

**28-72-1. Definitions.** In addition to the definitions contained in K.S.A. 65-1,201, and amendments thereto, the following definitions shall apply to the residential childhood lead poisoning prevention act.

(a) "Accreditation" means approval by KDHE of a training provider for a training course to train individuals for lead-based paint activities.

(b) "Accredited course" means a course that has been approved by the department for the training of lead professionals.

(c) "Act" means the residential childhood lead poisoning prevention act, and amendments thereto.

(d) "Adequate quality control" means a plan or design that ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control shall also include provisions for representative sampling.

(e) "Audit" means the monitoring by KDHE

of a training provider for a training course to ensure compliance with the act and this article.

(f) “Certified elevated blood lead (EBL) level inspector” and “EBL inspector” mean a person who meets the requirements of K.A.R. 28-72-6 and who is certified by the secretary.

(g) “Certified lead abatement supervisor” and “lead abatement supervisor” mean an individual who is trained by an accredited training program, as defined in this act, and certified by the secretary under K.A.R. 28-72-8 to supervise workers, to conduct lead abatement activities, and to prepare occupant protection plans and abatement reports.

(h) “Certified lead abatement worker” and “lead abatement worker” mean a person who meets the requirements of K.A.R. 28-72-7 and who is certified by the secretary.

(i) “Certified lead inspector” and “lead inspector” mean a person who meets the requirements of K.A.R. 28-72-5 and who is certified by the secretary. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

(j) “Certified lead professional” means a person who is certified by the secretary as a lead inspector, elevated blood lead (EBL) level inspector, lead abatement supervisor, lead abatement worker, project designer, or risk assessor.

(k) “Certified project designer” and “project designer” mean a person who meets the requirements of K.A.R. 28-72-9 and who has been certified by the secretary.

(l) “Certified risk assessor” and “risk assessor” mean a person who meets the requirements of K.A.R. 28-72-6 and who is certified by the secretary.

(m) “Child-occupied facility” means a building, or portion of a building, constructed before 1978, visited by the same child six years of age or under, on at least two different days within any seven consecutive days, if each day’s visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities shall include day care centers, preschools, and kindergarten classrooms.

(n) “Classroom training” means training devoted to lecture, learning activities, small group activities, demonstrations, evaluations, or any combination of these educational activities.

(o) “Clearance levels” means the values that indicate the maximum amount of lead permitted in

dust on a surface following completion of each abatement activity. These values shall be 40 micrograms per square foot on floors, 250 micrograms per square foot on windowsills, and 400 micrograms per square foot on window troughs.

(p) “Common area” means a portion of the building that is generally accessible to all occupants. This term may include the following:

- (1) Hallways;
- (2) stairways;
- (3) laundry and recreational rooms;
- (4) playgrounds;
- (5) community centers;
- (6) garages; and
- (7) boundary fences.

(q) “Component” and “building component” mean specific design, structural elements, or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These terms shall include the following:

(1) Interior components, including the following:

- (A) Ceilings;
- (B) crown moldings;
- (C) walls;
- (D) chair rails;
- (E) doors and door trim;
- (F) floors;
- (G) fireplaces;
- (H) radiators and other heating units;
- (I) shelves and shelf supports;
- (J) stair treads, risers, and stringers; newel posts; railing caps; and balustrades;

(K) windows and trim, including sashes, window heads, jambs, sills, stools, and troughs;

- (L) built-in cabinets;
- (M) columns and beams;
- (N) bathroom vanities;
- (O) countertops; and
- (P) air conditioners; and

(2) exterior components, including the following:

- (A) Painted roofing and chimneys;
- (B) flashing, gutters, and downspouts;
- (C) ceilings;
- (D) soffits and fascias;
- (E) rake boards, cornerboards, and bulkheads;
- (F) doors and door trim;
- (G) fences;
- (H) floors;
- (I) joists;
- (J) latticework;

- (K) railings and railing caps;
- (L) siding;
- (M) handrails;
- (N) stair risers, treads, and stringers;
- (O) columns and balustrades;
- (P) windowsills or window stools, troughs, casing, sashes and wells; and
- (Q) air conditioners.

(r) "Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

(s) "Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

(t) "Course exam blueprint" means written documentation identifying the proportion of course exam questions devoted to each major topic in the course curriculum.

(u) "Course test" means an evaluation of the overall effectiveness of the training, which shall test each trainee's knowledge and retention of the topics covered during the course.

(v) "Department" means the Kansas department of health and environment.

(w) "Deteriorated paint" means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

(x) "Discipline" means one of the specific types or categories of lead-based paint activities identified in this act in which individuals may receive training from accredited courses and become certified by the secretary.

(y) "Distinct painting history" means the application history, as indicated by the visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

(z) "Documented methodologies" means methods or protocols used to sample for the presence of lead in paint, dust, and soil.

(aa) "Elevated blood lead level (EBL) child" and "EBL child" mean any child who has an excessive absorption of lead with a confirmed concentration of lead in whole blood of 10 µg (micrograms) of lead per deciliter of whole blood from a single venous test.

(bb) "Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating, with or without reinforcement materials, or an adhesively bonded covering material.

(cc) "Encapsulation" means the application of an encapsulant.

(dd) "Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between the lead-based paint and the environment.

(ee) "EPA" means the United States environmental protection agency.

(ff) "Guest instructor" means an individual who is designated by the training program manager or principal instructor and who provides instruction specific to the lectures, hands-on work activities, or work practice components of a course.

(gg) "Hands-on skills assessment" means an evaluation of the effectiveness of the hands-on training that tests the ability of the trainees to demonstrate satisfactory performance of work practices and procedures as well as any other skills demonstrated in the course.

(hh) "Hands-on training" means training that involves the actual practice of a procedure, the use of equipment, or both.

(ii) "Hazardous waste" means any waste as defined in K.S.A. 65-3430, and amendments thereto.

(jj) "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including the following:

- (1) Repairing deteriorated lead-based paint;
- (2) specialized cleaning;
- (3) maintenance;
- (4) painting;
- (5) temporary containment;
- (6) ongoing monitoring of lead-based paint hazards or potential hazards; and
- (7) the establishment and operation of management and resident education programs.

(kk) "KDHE" means the Kansas department of health and environment.

(ll) "Large-scale abatement project" means a lead abatement project consisting of 10 or more dwellings.

(mm) "Lead abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards in a residential dwelling or child-occupied facility.

- (1) Lead abatement shall include the following:
  - (A) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replace-

ment of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;

(B) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with these measures;

(C) projects for which there is a written contract or other documentation requiring an individual to conduct activities in or to a residential dwelling or child-occupied facility that will result in or are designed to permanently eliminate lead-based paint hazards;

(D) projects resulting in the permanent elimination of lead-based paint hazards;

(E) projects resulting in the permanent elimination of lead-based paint hazards that are conducted by lead activity firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint abatement; and

(F) projects resulting in the permanent elimination of lead-based paint that are conducted in response to an abatement order.

(2)(A) Lead abatement shall not include renovation, remodeling, landscaping, and other activities if these activities are not designed to permanently eliminate lead-based paint hazards, but are designed to repair, restore, or remodel a given structure or dwelling, even though these activities could incidentally result in a reduction or elimination of lead-based paint hazards.

(B) Lead abatement shall not include interim controls, operations and maintenance activities, and other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(nn) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-based paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

(oo) "Lead-contaminated dust" means surface dust in residential dwellings or child-occupied facilities that contains in excess of 40 micrograms per square foot on uncarpeted floors, 250 micrograms per square foot on windowsills, and 400 micrograms per square foot on window troughs.

(pp) "Lead-contaminated soil" means bare soil on residential real property and on the property of a child-occupied facility that contains lead in excess of 400 parts per million for areas where

child contact is likely and in excess of 1,200 parts per million in the rest of the yard.

(qq) "Lead hazard screen" means a limited risk assessment activity that involves limited paint and dust sampling as described in 40 C.F.R. 745.227(c). Specifically, in a residential dwelling, two composite samples shall be taken from the floors and one from the windows in rooms where one or more children, age 72 months and under, are most likely to come into contact with dust. Additionally, in multifamily dwellings and child-occupied facilities, composite dust samples shall be taken from any common areas where one or more children through the age 72 months are likely to come into contact with dust.

(rr) "Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a written report explaining the results of the investigation.

(ss) "Licensed lead activity firm," "lead activity firm," and "firm" mean an association, company, corporation, partnership, sole proprietorship, or other business entity that performs lead-based paint activities to which the secretary has issued a license of approval.

(tt) "Living area" means any area of a residential dwelling used by at least one child, six years of age and under, including the following:

- (1) Living rooms;
- (2) kitchen areas;
- (3) dens;
- (4) playrooms; and
- (5) children's bedrooms.

(uu) "Local government" means a county, city, town, district, association, or other public body, including an agency comprised of two or more of these entities, created under state law.

(vv) "Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

(ww) "Third-party examination" means a discipline-specific examination administered by the department to test the knowledge of a person who has completed an approved training course and is applying for certification in a particular discipline.

(xx) "Nonprofit" means an entity that has demonstrated to any branch of the federal government or to a state, municipal, tribal, or territorial government that no part of its net earnings inure to the benefit of any private shareholder or individual.



(yy) "Occupation" means one of the specific types or categories of lead-based paint activities identified in this article for which individuals may receive training from accredited training providers. This term shall include lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, project designer, or any combination of these.

(zz) "Occupant protection plan" means a plan developed by a licensed lead activity firm before the commencement of lead abatement in a residential dwelling or child-occupied facility that describes the measures and management procedures to be taken during lead abatement to protect the building occupants from exposure to any lead-based paint hazards.

(aaa) "Oral exam" means an exam that is equivalent to the written exam in content, but is read to the student by the principal instructor. The student shall be required to provide the answers to the exam in writing.

(bbb) "Passing score" means a grade of 70% or better on the third-party examination and training course examination for a lead occupation certificate.

(ccc) "Permanently covered soil" means soil that has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, including pavement and concrete. Grass, mulch, and other landscaping materials shall not be considered permanent covering.

(ddd) "Principal instructor" means an individual who has the primary responsibility for organizing and teaching a particular course.

(eee) "Project design" means lead abatement project designs, occupant protection plans, and lead abatement reports.

(fff) "Reaccreditation" means the renewal of accreditation of a training provider for a training course after the expiration of the initial accreditation.

(ggg) "Reciprocity" means an agreement between KDHE and other states who have similar licensing provisions.

(hhh) "Recognized laboratory" means a laboratory recognized by the EPA pursuant to section 405(b) of the toxic substances control act (TSCA) as being capable of performing analyses for lead compounds in paint chips, dust, and soil samples.

(iii) "Reduction" means measures designed to reduce or eliminate human exposure to lead-

based paint hazards through methods including interim controls and abatement.

(jjj) "Refresher course" means a course taken by a certified lead professional to maintain certification in a particular discipline.

(kkk) "Renewal" means the reissuance of a lead occupation certificate, a lead activity firm license, or a training provider accreditation.

(lll) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the investigation and options for reducing lead-based paint hazards.

(mmm) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any territory or possession of the United States.

(nnn) "Target housing" means housing constructed before 1978 with the exception of any zero-bedroom housing or housing built exclusively for the elderly or for persons with disabilities, unless one or more children through the age of 72 months reside or are expected to reside in the housing for the elderly or persons with disabilities.

(ooo) "Training course" means the course of instruction established by this article to prepare an individual for certification in a single occupation.

(ppp) "Training curriculum" means an established set of course topics for instruction by an accredited training provider for a particular occupation designed to provide specialized knowledge and skills.

(qqq) "Training hour" means at least 50 minutes of actual learning, including time devoted to lectures, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

(rrr) "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

(sss) "Training provider" means a person or entity providing training courses for the purpose of state certification or certification renewal in the occupations of lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, and project designer.

(ttt) "Visual inspection for clearance testing"

means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed.

(uuu) "X-ray fluorescence analyzer (XRF)" means an instrument that determines lead concentrations in milligrams per square centimeter (mg/cm<sup>2</sup>) using the principle of x-ray fluorescence. (Authorized by and implementing K.S.A. 2001 Supp. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-2. General requirements for licensure and certification.** (a) Waiver. Applicants for certification or certified individuals may authorize others, including their employer, to act on their behalf regarding their certification application. This authorization shall be indicated on the application form provided by KDHE. If at any time the applicant or certified individual decides to change this authorization, the applicant or certified individual shall notify KDHE in writing of the change.

(b) Change of address. Each certified individual shall notify KDHE in writing of a change of mailing address no later than 30 days following the change. Each licensed lead activity firm shall notify KDHE in writing of a change in business mailing address no later than 30 days following the change. Until a change of address is received, all correspondence shall be mailed to the individual's mailing address and the lead activity firm's business address indicated on the most recent application form.

(c) Reciprocity. A lead occupation certificate may be issued by KDHE to any person that has made application and provided proof of certification from another state, if KDHE has entered into a reciprocity agreement with that state and the individual certification fee has been paid. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-3. Fees.** The following fees shall apply: (a) Training providers.

(1) Accreditation fee .....	\$1,000
(2) Initial fee.	
(A) Lead abatement supervisor, lead abatement worker, and project designer courses .....	\$1,000

(B) Risk assessor and lead inspector courses .....	\$1,000
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(3) Refresher course fee.

(A) Lead abatement supervisor, lead abatement worker, and project designer courses .....	\$500
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(B) Risk assessor and lead inspector courses .....	\$500
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(4) Reccreditation fee .....

(A)(i) Reccreditation for lead abatement supervisor, lead abatement worker, and project designer courses .....	\$1,000
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(ii) Reccreditation for risk assessor and inspector courses .....	\$1,000
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(B)(i) Refresher reccreditation for lead abatement supervisor, lead abatement worker, and project designer courses .....	\$500
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(ii) Refresher reccreditation for risk assessor and lead inspector courses .....	\$500
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(b) Lead inspector.

(1) Individual certification .....

(2) Individual recertification .....

(3) Certification by reciprocity .....

(c) Risk assessor.

(1) Individual certification .....

(2) Individual recertification .....

(3) Certification by reciprocity .....

(d) Lead abatement supervisor.

(1) Individual certification .....

(2) Individual recertification .....

(3) Certification by reciprocity .....

(e) Project designer.

(1) Individual certification .....

(2) Individual recertification .....

(3) Certification by reciprocity .....

(f) Lead abatement worker.

(1) Individual certification .....

(2) Individual recertification .....

(3) Certification by reciprocity .....

(g) Third-party examination .....

(h) Lead activity firm.

(1) License .....

(2) License renewal .....

(3) Lead abatement project fee .. 1% of each project or \$50, whichever is greater

(4) Licensure by reciprocity .....

Before qualifying for a fee exemption, a local health department or clinic shall have received a certificate from KDHE for elevated blood lead level investigation risk assessments. (Authorized

by and implementing K.S.A. 2001 Supp. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-4. Training provider accreditation.** (a) Good standing. Each individual firm wishing to provide lead activity training in Kansas shall be accredited by KDHE. Each individual or firm desiring accreditation of the training courses for lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, or project designer, or any combination, under this regulation who is required to be registered and in good standing with the Kansas secretary of state's office shall submit a copy of the individual's or firm's certificate of good standing to KDHE.

(b) Application for accreditation of a training provider for a training course. Completed applications shall be mailed to the Kansas department of health and environment.

Each application shall include the following:

(1) A completed training provider course accreditation application on a form provided by KDHE, which shall include the following:

(A) The training provider's name, address, and telephone number;

(B) the name and date of birth of the training manager;

(C) the name and date of birth of the principal instructor for each course;

(D) a list of locations at which training will take place;

(E) a list of courses for which the training provider is applying for accreditation; and

(F) a statement signed by the training manager certifying that the information in the application for accreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4 through K.A.R. 28-72-4c, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;

(2) a copy of the student and instructor manuals;

(3) the course agenda;

(4) the course examination blueprint;

(5) a copy of the quality control plan as described in paragraph (d)(8) of this regulation;

(6) a copy of a sample course completion diploma as described in paragraph (d)(7) of this regulation;

(7) a description of the facilities and equipment to be used for lectures and hands-on training;

(8) a description of the activities and procedures that will be used for conducting the skills assessment for each course;

(9) a check or money order for the applicable nonrefundable accreditation fees specified in K.A.R. 28-72-3, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization and is therefore exempt from these fees; and

(10) documentation supporting the training manager's, principal instructor's, and any guest instructor's qualifications.

(c) Procedure for issuance or denial of training provider accreditation for a training course.

(1) The applicant shall be informed by KDHE in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of incomplete application, the applicant shall submit to KDHE, in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in denial of the application for a training course accreditation.

(iii) After the information in the written notice is received, the applicant shall be informed by KDHE in writing that the application is either approved or denied.

(2) If an application is approved, a two-year accreditation certificate shall be issued by KDHE.

(3) If an application for training course accreditation is denied, the specific reason or reasons for the denial shall be stated by KDHE in the notice of denial to the applicant.

(A) Training course accreditation may be denied by KDHE for any of the following reasons:

(i) Failure of the training manager, principal instructor, or any guest instructor to satisfy the experience requirements;

(ii) three or more citations or violations within the past two years, by the training manager, principal instructor, or any guest instructor of any existing local, state, or federal lead-based paint activity regulations or standards;

(iii) false or misleading statements in the application;

(iv) false records, instructor qualifications, or other accreditation-related information or documentation;

(v) failure of the applicant to submit a complete application; or

(vi) final disciplinary action, for any violation of lead-based paint activity standards, against a training provider by another state, territory, federal agency or country, whether or not voluntarily agreed to by the training provider, including the denial of accreditation, surrender of the accreditation, allowing the accreditation to expire or lapse, or discontinuing or restricting the accreditation while subject to investigation or while actually under investigation by another state, territory, federal agency, or country.

(B) If an application is denied, the applicant may reapply for accreditation at any time.

(C) If an applicant is aggrieved by a determination to deny accreditation, the applicant may request a hearing by the department in accordance with the Kansas administrative procedure act.

(d) Requirements for accreditation of a training provider for a training course. For a training provider to maintain accreditation from KDHE to offer a training course, the training provider shall meet the following requirements:

(1) Training manager. The training provider shall employ a training manager who meets the requirements in subsection (e) of this regulation. The training manager shall be responsible for ensuring that the accredited training provider complies at all times with all of the requirements in these regulations. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. Each guest instructor shall meet the requirements in subsection (f) of this regulation.

(2) Principal instructor. The training provider, in coordination with the training manager, shall designate a qualified principal instructor who meets the requirements in subsection (f) of this regulation. The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course materials.

(3) The training provider shall meet the curriculum requirements set forth in K.A.R. 28-72-4a for each course contained in the application for accreditation of a training provider.

(4) Delivery of course. The training provider shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course exam, hands-on training, and assessment activities. This requirement shall include providing training equipment that reflects current work practice standards set forth in K.A.R. 28-72-13 through K.A.R. 28-72-21 and maintaining or updating the course materials, equipment, and facilities as needed.

(5) Course exam. For each course offered, the training provider shall conduct a monitored, written course exam at the completion of each course. An oral exam may be administered in lieu of a written course exam for the lead abatement worker course only. If an oral examination is administered, the student shall be required to provide the answers to the exam in writing.

(A) The course exam shall evaluate each trainee's competency and proficiency.

(B) All individuals shall pass the course exam in order to successfully complete any course and receive a course completion diploma. The passing score on the course exam shall be 70%.

(C) The training provider and the training manager shall be responsible for maintaining the validity and integrity of the course exam to ensure that the exam accurately evaluates each trainee's knowledge and retention of the course topics.

(6) Hands-on skills assessment. For each course offered, except for project designers, the training provider shall conduct a hands-on skills assessment. The training manager shall maintain the validity and integrity of the hands-on skills assessment to ensure that the assessment accurately evaluates each trainee's performance of the work practice procedures associated with the course topics.

(7) Course completion diploma. The training provider shall issue a unique course completion diploma to each individual who passes the training course. Each course completion diploma shall include the following:

(A) The name, a unique identification number, and the address of the individual;

(B) the name of the particular course that the individual completed;

(C) the dates of course attendance; and

(D) the name, address, and telephone number of the training provider.

(8) Quality control plan. The training manager shall develop and implement a quality control plan. The plan shall be used to maintain or pro-



gressively improve the quality of the accredited provider.

(A) This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course exam to reflect innovations in the field;

(ii) procedures for the training manager's annual review of the competency of the principal instructor; and

(iii) a review to ensure the adequacy of the facilities and equipment.

(B) An annual report discussing the results of the quality control plan shall be submitted to KDHE one year following accreditation and at renewal.

(9) Access by KDHE. The accredited training provider shall allow KDHE to conduct audits as needed in order for KDHE to evaluate the training provider's compliance with KDHE accreditation requirements. During this audit, the training provider shall make available to KDHE all information necessary to complete the evaluation. At KDHE's request, the training provider shall also make documents available for photocopying.

(10) Recordkeeping. The accredited training provider shall maintain at its principal place of business, for at least five years, the following records:

(A) All documents specified in paragraph (e)(2) and (f)(2) of this regulation that demonstrate the qualifications listed in paragraph (e)(1) of this regulation for the training manager, and paragraph (f)(1) of this regulation for the principal instructor and any guest instructor;

(B) curriculum or course materials, or both, and documents reflecting any changes made to these materials;

(C) the course examination and blueprint;

(D) information regarding how the hands-on skills assessment is conducted, including the following:

(i) The name of the person conducting the assessment;

(ii) the criteria for grading skills;

(iii) the facilities used;

(iv) the pass and fail rate; and

(v) the quality control plan as described in paragraph (d)(8) of this regulation;

(E) results of the students' hands-on skills assessments and course exams, and a record of each student's course completion diploma; and

(F) any other material not listed in this para-

graph (d)(10) that was submitted to KDHE as part of the training provider's application for accreditation.

(11) Course notification. The accredited training provider shall notify KDHE in writing at least 14 calendar days before conducting an accredited training course.

(A) Each notification shall include the following information:

(i) The location of the course, if it will be conducted at a location other than the training provider's training facility;

(ii) the dates and times of the course;

(iii) the name of the course; and

(iv) the name of the principal instructor and any guest instructors conducting the course.

(B) If the scheduled training course has been changed or canceled, the accredited training provider shall notify KDHE in writing at least 24 hours before the training course was scheduled to begin.

(12) Changes to a training course. After a training course has been accredited, each change in any of the following items shall be submitted in writing to KDHE for review and approval before the continuation of the training course:

(A) The course curriculum;

(B) the course examination;

(C) the course materials;

(D) the training manager, principal instructors, or guest instructors; or

(E) the course completion diploma.

Within 60 calendar days after receipt of a change to a training course, the provider shall be informed by KDHE in writing that the change is either approved or disapproved. If the change is approved, the accredited training provider shall include the change in the training course. If the change is disapproved, the accredited training provider shall not include the change in the training course.

(13) Change of ownership. If an accredited training provider changes ownership, the new owner shall notify KDHE in writing at least 30 calendar days before the change of ownership becomes effective. The notification shall include a new training course provider accreditation application, the appropriate fee or fees, and the date that the change of ownership will become effective. The new training course provider accreditation application shall be processed according to this regulation. The current training provider's accreditation shall expire on the effective date spec-

ified in the notification of the change of ownership.

(14) Change of address. The accredited training provider shall submit to KDHE a written notice of the accredited training provider's new address and telephone number, and a description of the new training facility. The accredited training provider shall submit this information to KDHE not later than 30 days before relocating its business or transferring its records.

(e) Training, education, and experience requirements for the training manager.

(1) The education or experience requirements for the training manager shall include one year of experience in lead or asbestos abatement, painting, carpentry, renovation, remodeling, safety and health, or industrial hygiene, and at least one of the following:

(A) A minimum of two years of experience in teaching or training adults;

(B) a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, business administration, or education; or

(C) a minimum of two years of experience in managing a training program specializing in environmental hazards.

(2) The following records of experience and education shall be recognized by KDHE as evidence that the individual meets or exceeds KDHE requirements for a training manager:

(A) Resumes, letters of reference from past employers, or documentation to evidence past experience that includes specific dates of employment, the employer's name, address, telephone number, and specific job duties, as evidence of meeting the experience requirements; and

(B) official academic transcripts or diplomas, as evidence of meeting the education requirements.

(f) Training, education, and experience requirements for the principal instructor and any guest instructor.

(1) The training, education, and experience requirements for the principal instructor and any guest instructor of a training course shall include all of the following:

(A) Successful completion of at least 24 hours of any KDHE-accredited lead-specific training;

(B) a minimum of one year of experience in teaching or training adults; and

(C) a minimum of one year of experience in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and

health, or industrial hygiene, or an associate degree or higher from a postsecondary educational institution in building construction technology, engineering, safety, public health, or industrial hygiene.

(2) The following records of experience and education shall be recognized by KDHE as evidence that the individual meets or exceeds KDHE requirements for a principal instructor:

(A) Course completion diplomas issued by the KDHE-accredited training provider as evidence of meeting the training requirements;

(B) official academic transcripts or diplomas, as evidence of meeting the education requirements; and

(C) resumes, letters of reference from past employers, or documentation to evidence past experience that includes specific dates of employment, the employer's name, address, telephone number, and specific job duties, as evidence of meeting the experience requirements.

(g)(1) Training provider accreditation may be restricted, suspended, or revoked by KDHE if a training provider, training manager, or other person with supervisory authority over the training provider performs at least one of the following:

(A) Provides, offers to provide, or claims to provide KDHE-accredited training courses without having this accreditation;

(B) presents inaccurate information in a training course;

(C) fails to submit any required information or notifications to KDHE in a timely manner;

(D) falsifies accreditation records, instructor qualifications, or other accreditation-related information or documentation;

(E) fails to comply with the training standards and requirements in this regulation and K.A.R. 28-72-4a;

(F) receives three or more citations or violations within the past two years of any existing local, state, or federal lead-based paint activity regulations or standards; or

(G) makes false or misleading statements to KDHE in its application for accreditation or reaccreditation that KDHE relied upon in approving the application.

(2) Training provider accreditation may be restricted, suspended, or revoked by KDHE if the training provider has incurred final disciplinary action by another state, territory, federal agency, or country, whether or not voluntarily agreed to by the training provider, including the denial of

accreditation, surrender of the accreditation, allowing the accreditation to expire or lapse, or discontinuing or restricting the accreditation while subject to investigation or while actually under investigation by another state, territory, federal agency, or country.

(3) Before restricting, suspending, or revoking a training provider's accreditation, a training provider shall be given written notice of the reasons for the restriction, suspension, or revocation. The training provider may request a hearing by the department in accordance with the Kansas administrative procedure act.

(h) Renewal of accreditation.

(1) Unless revoked sooner, a training provider's accreditation shall expire two years after the date of issuance. If a training provider meets the requirements of this regulation and K.A.R. 28-72-4a, the training provider shall be reaccredited.

(2) Each training provider seeking reaccreditation shall submit an application to KDHE at least 60 calendar days before the provider's accreditation expires. If a training provider does not submit its application for reaccreditation by that date, the provider's reaccreditation before the end of the accreditation period shall not be guaranteed by KDHE.

(3) The training provider's application for reaccreditation shall contain the following:

(A) A completed training provider course accreditation application on a form provided by KDHE, which shall include the following:

(i) The training provider's name, address, and telephone number;

(ii) the name and date of birth of the training manager;

(iii) the name and date of birth of the principal instructor for each course;

(iv) a list of locations at which training will take place;

(v) a list of courses for which the training provider is applying for reaccreditation; and

(vi) a statement signed by the training manager certifying that the information provided in the application for reaccreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4 and K.A.R. 28-72-4a, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;

(B) a list of courses for which the training provider is applying for reaccreditation;

(C) a description of any changes to the training facility, equipment, or course materials since the training provider's last application was approved that adversely affects the students' ability to learn; and

(D) a check or money order made payable to the Kansas department of health and environment for the nonrefundable fees specified in K.A.R. 28-72-3, as applicable, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization and is therefore fee exempt from these fees.

(i) If the training provider has allowed its accreditation to expire and the provider desires to be accredited, it shall reapply in the same manner as that required for an application for an original accreditation in accordance with this regulation. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-4a. Curriculum requirements for training providers.** (a)(1) Each training provider of a lead inspector training course shall ensure that the lead inspector training course curriculum includes, at a minimum, 16 hours of classroom training and eight hours of hands-on training.

(2) Each lead inspector training course shall include, at a minimum, the following course topics:

(A) The role and responsibilities of an inspector;

(B) background information on lead, including the history of lead use and sources of environmental lead contamination;

(C) the health effects of lead, including the following:

(i) The ways that lead enters and affects the body;

(ii) the levels of concern; and

(iii) symptoms, diagnosis, and treatments;

(D) the regulatory background and an overview of lead in applicable state and federal guidelines or regulations pertaining to lead-based paint, including the current version of each of the following:

(i) 40 CFR part 745;

(ii) U.S. HUD guidelines for the evaluation and control of lead-based paint hazards in housing;

- (iii) 29 CFR 1910.1200;
- (iv) 29 CFR 1926.62; and
- (v) title X: the residential lead-based paint hazard reduction act of 1992;

(E) the regulations in this article pertaining to lead licensure and to the Kansas work practice standards for lead-based paint activities specific to lead inspection activities;

(F) quality control and assurance procedures in testing analysis;

(G) legal liabilities and obligations; and

(H) recordkeeping.

(3) Each lead inspector training course shall also include, at a minimum, the following course topics, the presentation of which shall require hands-on training as an integral component of the course:

(A) Lead-based paint inspection methods, including the selection of rooms and components for sampling or testing;

(B) preinspection planning and review, including developing a schematic site plan and determining inspection criteria and locations to collect samples in single-family and multifamily housing;

(C) paint, dust, and soil sampling methodologies, including the following:

(i) Lead-based paint testing or X-ray fluorescence paint analyzer (XRF) use, including the types of XRF units, their basic operation, and interpretation of XRF results, including substrate correction;

(ii) soil sample collection, including soil sampling techniques, the number and location of soil samples, and interpretation of soil sampling results; and

(iii) dust sample collection techniques, including the number and location of wipe samples and the interpretation of test results;

(D) clearance standards and testing, including random sampling; and

(E) preparation of the final inspection report.

(b) Each training provider of a risk assessor training course shall ensure that the risk assessor training course curriculum includes, at a minimum, 12 hours of classroom training and four hours of hands-on training.

(1) Each risk assessor training course shall include, at a minimum, the following course topics:

(A) The role and responsibilities of the risk assessor;

(B) the collection of background information to perform a risk assessment, including information on the age and history of the housing and

occupancy by children under six years of age and women of childbearing age;

(C) sources of environmental lead contamination, including paint, surface dust and soil, water, air, packaging, and food;

(D) the regulations in this article pertaining to lead certification and to Kansas work practice standards for lead-based paint specific to risk assessment activities;

(E) development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards; and

(F) legal liabilities and obligations specific to a risk assessor.

(2) Each risk assessor training course shall also include, at a minimum, the following course topics, the presentation of which shall require hands-on training as an integral component of the course:

(A) Visual inspection for the purposes of identifying potential sources of lead hazards;

(B) lead-hazard screen protocols;

(C) sampling for other sources of lead exposure, including drinking water;

(D) interpretation of lead-based paint and other lead sampling results related to the Kansas clearance standards; and

(E) preparation of a final risk assessment report.

(c) Each training provider of a lead abatement worker course shall ensure that the lead abatement worker training course curriculum includes, at a minimum, 16 hours of classroom training and eight hours of hands-on training.

(1) Each lead abatement worker training course shall include, at a minimum, the following course topics:

(A) The role and responsibilities of a lead abatement worker;

(B) background information on lead, including the history of lead use and sources of environmental lead contamination;

(C) the health effects of lead, including the following:

(i) The ways that lead enters and affects the body;

(ii) the levels of concern; and

(iii) symptoms, diagnosis, and treatments;

(D) the regulatory background and an overview of lead in applicable state and federal guidelines or regulations pertaining to lead-based paint,



including the current version of each of the following:

- (i) 40 CFR part 745;
- (ii) U.S. HUD guidelines for the evaluation and control of lead-based paint hazards in housing;
- (iii) 29 CFR 1910.1200;
- (iv) 29 CFR 1926.62; and
- (v) title X: the residential lead-based paint hazard reduction act of 1992;

(E) the regulations in this article pertaining to lead certification and to the Kansas work practice standards for lead-based paint activities specific to lead abatement activities; and

(F) waste disposal techniques.

(2) Each lead abatement training course shall also include, at a minimum, the following course topics, the presentation of which shall require hands-on training as an integral component of the course:

(A) Personal protective equipment information, including respiratory equipment selection, air-purifying respirators, care and cleaning of respirators, respiratory program, protective clothing and equipment, and hygienic practices;

(B) lead hazard recognition and control, including site characterization, exposure measurements, medical surveillance, and engineering controls;

(C) preabatement set-up procedures, including containment for residential and commercial buildings and for superstructures;

(D) lead abatement and lead-hazard reduction methods for residential and commercial buildings and for superstructures, including prohibited practices;

(E) interior dust abatement methods and cleanup techniques; and

(F) soil and exterior dust abatement methods.

(d) Each training provider of a lead abatement supervisor training course shall ensure that the lead abatement supervisor training course curriculum includes, at a minimum, 28 hours of classroom training and 12 hours of hands-on training.

(1) Each lead abatement supervisor training course shall include, at a minimum, the following course topics:

(A) The role and responsibilities of a supervisor;

(B) background information on lead, including the history of lead use and sources of environmental lead contamination;

(C) the health effects of lead, including the following:

(i) The ways that lead enters and affects the body;

(ii) the levels of concern; and

(iii) symptoms, diagnosis, and treatments;

(D) the regulatory background and an overview of lead in applicable state and federal guidelines or regulations pertaining to lead-based paint, including the current version of each of the following:

(i) 40 CFR part 745;

(ii) U.S. HUD guidelines for the evaluation and control of lead-based paint hazards in housing;

(iii) 29 CFR 1910.1200;

(iv) 29 CFR 1926.62; and

(v) title X: the residential lead-based paint hazard reduction act of 1992;

(E) liability and insurance issues relating to lead abatement;

(F) the community relations process;

(G) hazard recognition and control techniques, including site characterization, exposure measurements, material identification, safety and health planning, medical surveillance, and engineering controls;

(H) the regulations in this article pertaining to lead certification and to the Kansas work practice standards for lead-based paint activities specific to lead abatement activities;

(I) clearance standards and testing;

(J) cleanup and waste disposal; and

(K) recordkeeping.

(2) Each lead abatement supervisor training course shall also include, at a minimum, the following course topics, the presentation of which shall require hands-on training as an integral component of the course:

(A) Cost estimation;

(B) risk assessment and inspection report interpretation;

(C) the development and implementation of an occupant protection plan and preabatement work plan, including containment for residential and commercial buildings and for superstructures;

(D) lead hazard recognition and control;

(E) personal protective equipment information, including respiratory equipment selection, air-purifying respirators, care and cleaning of respirators, respiratory program, protective clothing and equipment, and hygienic practices;

(F) lead abatement and lead-hazard reduction

methods, including prohibited practices, for residential and commercial buildings and superstructures;

(G) project management, including supervisory techniques, contractor specifications, emergency response planning, and blueprint reading;

(H) interior dust abatement and cleanup techniques;

(I) soil and exterior dust abatement methods; and

(J) the preparation of an abatement report.

(e) Each training provider of a project designer training course shall ensure that the project designer training course curriculum includes, at a minimum, eight hours of classroom training. Each project designer training course shall include, at a minimum, the following course topics:

(1) The role and responsibilities of a project designer;

(2) the development and implementation of an occupant protection plan for large-scale abatement projects;

(3) lead abatement and lead-hazard reduction methods, including prohibited practices, for large-scale abatement projects;

(4) interior dust abatement or cleanup or lead-hazard control, and reduction methods for large-scale abatement projects;

(5) soil and exterior dust abatement methods for large-scale abatement projects;

(6) clearance standards and testing for large-scale abatement projects; and

(7) integration of lead abatement methods with modernization and rehabilitation projects for large-scale abatement projects. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-4b. Training provider accreditation; reciprocity.** An accreditation certificate may be issued by KDHE to any person or entity that has submitted an application, paid the necessary fees, and provided proof of accreditation from another state, if KDHE has entered into a reciprocity agreement with that state. (a) Application for accreditation of a training provider for a training course under reciprocity.

(1) Completed applications shall be mailed to the department.

(2) Each application shall include the following:

(A) A completed training provider course accreditation application on a form provided by KDHE, which shall include the following:

(i) The training provider's name, address, and telephone number;

(ii) the name and date of birth of the training manager;

(iii) the name and date of birth of the principal instructor for each course;

(iv) a list of locations at which training will take place;

(v) a list of courses for which the training provider is applying for accreditation; and

(vi) a statement signed by the training manager certifying that the information provided in the application for accreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4 and K.A.R. 28-72-4c, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;

(B) the course agenda;

(C) the course examination blueprint;

(D) a copy of the quality control plan as described in paragraph (d)(8) of K.A.R. 28-72-4;

(E) a copy of a sample course completion diploma as described in paragraph (d)(7) of K.A.R. 28-72-4;

(F) a description of the facilities and equipment to be used for lectures and hands-on training;

(G) a description of the activities and procedures that will be used for conducting the hands-on skills assessment for each course;

(H) a check or money order for the applicable nonrefundable training provider accreditation and initial fees, as specified in K.A.R. 28-72-3, made payable to the Kansas department of health and environment, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization and is therefore exempt from payment of these fees;

(I) documentation supporting the training manager's, principal instructor's, and guest instructors' qualifications; and

(J) documentation of accreditation in the courses for which the training provider is applying for accreditation.

(b) Application for accreditation of a training provider for a refresher training course under rec-

iprocity. To obtain KDHE accreditation by reciprocity to offer refresher training in any occupation, a training provider shall submit a completed application to KDHE. Completed applications shall be mailed to the department.

Each application shall include the following:

(1) A completed training course accreditation application on a form provided by KDHE, which shall include the following:

(A) The training provider's name, address, and telephone number;

(B) the name and date of birth of the training manager;

(C) the name and date of birth of the principal instructor for each course;

(D) a list of locations at which training will take place;

(E) a list of courses for which the training provider is applying for accreditation; and

(F) a statement signed by the training manager certifying that the information provided in the application for accreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4 through K.A.R. 28-72-4c, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;

(2) the course agenda;

(3) the course examination blueprint;

(4) a copy of the quality control plan as described in paragraph (d)(8) of K.A.R. 28-72-4;

(5) a copy of a sample course completion diploma as described in paragraph (d)(7) of K.A.R. 28-72-4;

(6) a description of the facilities and equipment to be used for lectures and hands-on training;

(7) a check or money order for the applicable nonrefundable refresher fee specified in K.A.R. 28-72-3, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization and is therefore exempt from payment of this fee;

(8) documentation supporting the training manager's and principal instructor's qualifications; and

(9) documentation of accreditation by one or more other states in the refresher course for which the training provider is applying for accreditation.

(c) The good standing requirements in K.A.R. 28-72-4(a), the procedures for issuance or denial of accreditation in K.A.R. 28-72-4(c), the requirements for accreditation of a training provider for a training course in K.A.R. 28-72-4(d), the training, education, and experience requirements for training managers and principal instructors in K.A.R. 28-72-4(e) and (f), and provisions relating to restriction, suspension, or revocation of accreditation in K.A.R. 28-72-4(g) shall apply to all training providers applying for accreditation of one or more training courses or refresher training courses by reciprocity, as applicable.

(d)(1) Unless revoked sooner, each training provider's reciprocal accreditation, including refresher training accreditation, shall expire two years after the date of issuance. If a training provider meets the requirements of this regulation and K.A.R. 28-72-4, K.A.R. 28-72-4a, and, if applicable, K.A.R. 28-72-4c, the training provider shall be reaccredited.

(2) Each training provider seeking reciprocal reaccreditation shall submit an application to KDHE at least 60 calendar days before the provider's accreditation expires. If a training provider does not submit its application for reaccreditation by that date, the provider's reaccreditation before the end of the accreditation period shall not be guaranteed by KDHE.

(3) The training provider's application for reaccreditation shall contain the following:

(A) A completed training provider course accreditation application on a form provided by KDHE, which shall include the following:

(i) The training provider's name, address, and telephone number;

(ii) the name and date of birth of the training manager;

(iii) the name and date of birth of the principal instructor for each course;

(iv) a list of locations at which training will take place;

(v) a list of courses for which the training provider is applying for reaccreditation; and

(vi) a statement signed by the training manager certifying that the information provided in the application for reaccreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4 through K.A.R. 28-72-4c, and that the training provider will conduct lead training only in those occupa-

tions in which the training provider has received accreditation;

(B) a list of courses for which the training provider is applying for reaccreditation;

(C) a description of any changes to the training facility, equipment, or course materials since the training provider's last application was approved that adversely affect the students' ability to learn; and

(D) a check or money order made payable to the Kansas department of health and environment for the applicable nonrefundable reaccreditation fee specified in K.A.R. 28-72-3, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization and is therefore exempt from this fee.

(4) If the training provider has allowed its accreditation to expire and desires to be accredited, the training provider shall reapply in the same manner as that required for an application for an original accreditation in accordance with this regulation. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-4c. Training provider accreditation; refresher training course.** (a) Application for accreditation of a training provider for a refresher training course. A training provider may seek accreditation to offer refresher training courses in any occupation. To obtain KDHE accreditation to offer refresher training courses, each training provider shall meet the following minimum requirements:

(1) Each refresher course shall review the curriculum topics of the full-length courses listed in K.A.R. 28-72-4a as appropriate. In addition, each training provider shall ensure that the refresher course of study includes, at a minimum, the following:

(A) An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate occupation;

(B) current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate occupation; and

(C) current technologies relating to lead-based paint activities in general, as well as specific in-

formation pertaining to the appropriate occupation.

(2) Each refresher course, except for the project designer course, shall last a minimum of eight training hours. The project designer refresher course shall last a minimum of four training hours.

(3) For each refresher training course offered, the training provider shall conduct a hands-on assessment, if applicable.

(4) For each refresher training course offered, the training provider shall conduct a course exam at the completion of the course.

(b) Any training provider may apply for accreditation of a refresher training course concurrently with its application for accreditation of the corresponding training course as described in K.A.R. 28-72-4. If the training provider submits both applications concurrently, the procedures and requirements specified in K.A.R. 28-72-4 shall be used by KDHE for accreditation of the refresher course and the corresponding training course.

(c) Each training provider seeking accreditation to offer only refresher training courses shall submit a written application to KDHE.

(1) Completed applications shall be mailed to the Kansas department of health and environment.

(2) The application shall include the following:

(A) A completed training course accreditation application on a form provided by KDHE, which shall include the following:

(i) The training provider's name, address, and telephone number;

(ii) the name and date of birth of the training manager;

(iii) the name and date of birth of the principal instructor for each course;

(iv) a list of locations at which training will take place;

(v) a list of courses for which the training provider is applying for accreditation; and

(vi) a statement signed by the training manager certifying that the information provided in the application for accreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4 through K.A.R. 28-72-4c, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;



(B) a copy of the student and instructor manuals;

(C) the course agenda;

(D) the course examination blueprint;

(E) a copy of the quality control plan as described in paragraph (d)(8) of K.A.R. 28-72-4;

(F) a copy of a sample course completion diploma as described in paragraph (d)(7) of K.A.R. 28-72-4;

(G) a description of the facilities and equipment to be used for lecture and hands-on training;

(H) a check or money order for either of the following nonrefundable fees, unless the training provider is exempt from these fees because the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization:

(i) The \$500 fee for the refresher course for risk assessor and lead inspector classes; or

(ii) the \$500 fee for the refresher course for lead abatement supervisor, project designer, and abatement worker.

(d) The following shall apply to each training provider applying for the accreditation of refresher training courses:

(1) The good standing requirements in K.A.R. 28-72-4(a);

(2) the procedures for training provider accreditation issuance or denial in K.A.R. 28-72-4(c);

(3) the requirements for accreditation of a training provider for a training course;

(4) the training, education, and the experience requirements for training managers and principal instructors in K.A.R. 28-72-4(e) and (f); and

(5) the provisions relating to restriction, suspension, or revocation of accreditation in K.A.R. 28-72-4(g).

(e)(1) Unless revoked sooner, each training provider's accreditation, including refresher training courses, shall expire two years after the date of issuance. If a training provider meets the requirements of subsections (a), (c), and (d) of this regulation, the training provider shall be reaccredited.

(2) Each training provider seeking reaccreditation of one or more refresher training courses shall submit an application to KDHE at least 60 calendar days before the training provider's accreditation expires. If a training provider does not submit its application for reaccreditation by that date, the provider's reaccreditation before the end

of the accreditation period shall not be guaranteed by KDHE.

(3) The training provider's application for reaccreditation shall contain the following:

(A) A completed training provider course accreditation application on a form provided by KDHE, which shall include the following:

(i) The training provider's name, address, and telephone number;

(ii) the name and date of birth of the training manager;

(iii) the name and date of birth of the principal instructor for each course;

(iv) a list of locations at which training will take place;

(v) a list of refresher training courses for which the training provider is applying for reaccreditation; and

(vi) a statement signed by the training manager certifying that the information provided in the application for reaccreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4, K.A.R. 28-72-4a, and K.A.R. 28-72-4c, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;

(B) a list of refresher training courses for which the training provider is applying for reaccreditation;

(C) a description of any changes to the training facility, equipment, or course materials since the training provider's last application was approved that adversely affect the students' ability to learn; and

(D) a check or money order made payable to the Kansas department of health and environment for the nonrefundable fees specified in K.A.R. 28-72-3, as applicable, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization and is therefore exempt from these fees.

(4) If the training provider has allowed its accreditation to expire and the provider desires to be accredited, the training provider shall reapply in the same manner as that required for an application for an original accreditation in accordance with this regulation. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-

9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-5. Application process and requirements for the certification of lead inspectors.** (a) Application for a lead inspector certificate.

(1) Each applicant for a lead inspector certificate shall submit a completed application to KDHE before consideration for certificate issuance. All applications for certification shall be received by KDHE at least 30 days before the date of the third-party examination, but the deadline for filing applications may be waived by KDHE as particular circumstances justify. Completed applications shall be mailed to KDHE.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's social security number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the names of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(ix) the type of training completed, including the name of the training provider, certificate identification number, and dates of course attendance;

(x) any employment history or education that meets the experience requirements in subsection (c) of this regulation; and

(xi) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the KDHE-accredited lead inspector training course completion diploma, and any required refresher course completion diplomas;

(C) two recent, passport-size color photographs of the applicant's face without a hat or sunglasses. Computer-generated or photocopied photographs shall not be acceptable;

(D) documentation pursuant to subsection (c) of this regulation as evidence of meeting the education or experience requirements for lead inspectors; and

(E) a check or money order made payable to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a lead inspector certificate shall apply to KDHE within one year after the applicant's successful completion of the KDHE-accredited lead inspector training course, as indicated on the course completion diploma. Applicants failing to apply within one year after the date on the training course completion diploma shall, before making application for certification, successfully complete the eight-hour lead inspector refresher training course accredited by the KDHE.

(4) Each applicant who fails to apply within two years after the lead inspector training and who has not successfully completed refresher training shall successfully complete the KDHE-accredited lead inspector training course before submitting an application for a lead inspector certificate.

(b) Application for a lead inspector certificate under reciprocity.

(1) Each applicant for a lead inspector certificate by reciprocity shall submit a completed application to KDHE before consideration for certificate issuance. Completed applications shall be mailed to KDHE.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's social security number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like

to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the name of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(ix) the type of training completed, including the name of the training provider, diploma identification number, and date of course completion;

(x) any employment history or education that meets the experience requirements in subsection (c) of this regulation; and

(xi) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) two recent, passport-size color photographs of the applicant's face without a hat or sunglasses. Computer-generated or photocopied photographs shall not be acceptable; and

(C) a check or money order made payable to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(c) Training, education, and experience requirements for a lead inspector certificate.

(1) Each applicant for certification as a lead inspector shall complete a KDHE-accredited lead inspector training course and shall pass the course examination and the third-party examination, each with a score of 70% or more.

(2) Each applicant for certification as a lead inspector shall meet the minimum education or experience requirements for a certified lead inspector.

(A) The minimum education or experience requirements for a certified lead inspector shall include at least one of the following:

(i) A bachelor's degree;

(ii) an associate's degree and one year of experience in a related field, including housing repair and inspection, and lead, asbestos, and environmental remediation work; or

(iii) either a high school diploma or a certificate of high school equivalency (GED), in addition to two years of experience in a related field, includ-

ing housing repair and inspection, and lead, asbestos, and environmental remediation work.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (c)(2)(A) of this regulation:

(i) Official academic transcripts or diplomas as evidence of meeting the education requirements;

(ii) resumes, letters of reference, or documentation of work experience, which at a minimum shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements; and

(iii) course completion diplomas issued by the KDHE-accredited training provider as evidence of meeting the training requirements.

(d) Procedure for issuance or denial of a lead inspector certificate.

(1) The applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice, the applicant shall submit to the secretary, in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by KDHE for any of the following reasons:

(i) Failure to satisfy education or experience requirements;

(ii) the type and amount of training;

(iii) false or misleading statements in the application;

(iv) failure to achieve a passing score on the third-party exam after three attempts;

(v) failure to submit a complete application;

(vi) three or more citations or violations within the past two years of any existing local, state, or

federal lead-based paint activity regulations or standards;

(vii) three or more violations within the past two years of 29 CFR 1926.62, as revised on January 8, 1998, or 29 CFR 1910.1200, as revised on February 13, 1996, both of which are hereby adopted by reference;

(viii) fraud or failure to disclose facts relevant to the application;

(ix) permitting the duplication or use by another of the individual's certificate;

(x) any other information that may affect the applicant's ability to appropriately perform lead inspections; or

(xi) final disciplinary action, for any violation of lead-based paint activity standards, against the certified individual by another state, territory, federal agency, or country, whether or not voluntarily agreed to by the certified individual, including the denial of certification, surrender of the certificate, allowing the certificate to expire, or discontinuing or restricting the certificate while subject to investigation or while actually under investigation by another state, territory, federal agency, or country.

(C) If an application is denied, the applicant may reapply to KDHE for a lead inspector certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may appeal KDHE's denial to the administrative hearing commission as provided by the Kansas administrative procedure act.

(2) Within 180 calendar days after application approval, the applicant shall attain a passing score on the third-party examination for lead inspectors.

(A) An applicant shall not sit for the third-party examination for lead inspectors more than three times within 180 calendar days after the issuance date of the notice of an approved application.

(B) The applicant's failure to obtain a passing score on the third-party examination for lead inspectors within the 180-day period following the notice of an approved application for a certificate shall result in KDHE's denial of the individual's application for a certificate. The individual may reapply to KDHE pursuant to this regulation but only after retaking the KDHE-accredited lead inspector training course.

(3) After the applicant passes the third-party examination, a two-year lead inspector certificate

and a photo identification badge shall be issued by KDHE.

(4) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-6. Application process and requirements for the certification of risk assessors.** (a) Application for a risk assessor certificate.

(1) Each applicant for a risk assessor certificate shall submit a completed application to KDHE before consideration for certificate issuance. All applications for certification shall be received by KDHE at least 30 days before the date of the third-party examination, but the deadline for filing applications may be waived by KDHE as particular circumstances justify. Completed applications shall be mailed to KDHE.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's social security number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the names of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(ix) the type of training completed, including the name of the training provider, diploma identification number, and dates of course attendance;

(x) any employment history or education that



meets the experience requirements in subsection (c) of this regulation; and

(xi) the signature of applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the KDHE-accredited risk assessor and lead inspector training course completion diploma, and any required refresher course completion diplomas;

(C) two recent, passport-size color photographs of the applicant's face without a hat or sunglasses. Computer-generated or photocopied photographs shall not be acceptable;

(D) documentation pursuant to subsection (c) of this regulation as evidence of meeting the education or experience requirements for risk assessors; and

(E) a check or money order made payable to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a risk assessor certificate shall apply to KDHE within one year after the applicant's successful completion of the KDHE-accredited risk assessor training course, as indicated on the course completion diploma. Applicants failing to apply within one year after the date on the training course completion certificate shall, before making application for certification, successfully complete the eight-hour risk assessor refresher training course accredited by the KDHE.

(4) An applicant who fails to apply within two years after the risk assessor training and who has not successfully completed the refresher training course shall successfully complete the KDHE-accredited risk assessor training course before submitting an application for a risk assessor certificate.

(b) Application for risk assessor certificate under reciprocity.

(1) Each applicant for a risk assessor certificate by reciprocity shall submit a completed application to KDHE before consideration for certificate issuance. Completed applications shall be mailed to KDHE.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's social security number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the name of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(ix) any employment history or education that meets the experience requirements in subsection (c) of this regulation; and

(x) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) two recent passport-size color photographs of the applicant's face without a hat or sunglasses. Computer-generated or photocopied photographs shall not be acceptable; and

(C) a check or money order made payable to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(c) Training, education, and experience requirements for a risk assessor certificate.

(1) Each applicant for a certificate as a risk assessor shall complete a KDHE-accredited risk assessor training course and a lead inspector training course, and shall pass both the course examinations and the third-party risk assessor examination, each with a score of 70% or more.

(2) Each applicant for a certificate as a risk assessor shall meet the minimum education and experience requirements for a certified risk assessor.

(A) The minimum education and experience requirements for a certified risk assessor shall include at least one of the following:

(i) A bachelor's degree and at least one year of experience in a related field, including housing repair and inspection, and lead, asbestos, and environmental remediation work;

(ii) an associate's degree and two years of ex-

perience in a related field, including housing repair and inspection, and lead, asbestos, and environmental remediation work;

(iii) certification as an industrial hygienist, professional engineer, or registered architect, or certification in a related engineering, health, or environmental field, including a safety professional and environmental scientist; or

(iv) either a high school diploma or a certificate of high school equivalency (GED), in addition to three years of experience in a field, including housing repair and inspection, and lead, asbestos, and environmental remediation work.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (c)(2)(A) of this regulation:

(i) Official academic transcripts or diplomas as evidence of meeting the education requirements;

(ii) resumes, letters of reference, or documentation of work experience, which at a minimum shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(iii) course completion diplomas issued by the KDHE-accredited training provider as evidence of meeting the training requirements; and

(iv) appropriate documentation of certifications or registrations.

(d) Procedure for issuance or denial of a risk assessor certificate.

(1) The applicant shall be informed by KDHE in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice, the applicant shall submit to KDHE, in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in KDHE's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by KDHE in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall

specify the reason or reasons for the denial. Certification may be denied by KDHE for any of the following reasons:

(i) Failure to satisfy education or experience requirements;

(ii) the type and amount of training;

(iii) false or misleading statements in the application;

(iv) failure to achieve a passing score on the third-party exam after three attempts;

(v) failure to submit a complete application;

(vi) three or more citations or violations within the past two years of any existing local, state, or federal lead-based paint activity regulations or standards;

(vii) three or more violations within the past two years of 29 CFR 1926.62 or 29 CFR 1910.1200;

(viii) fraud or failure to disclose facts relevant to the application;

(ix) permitting the duplication or use by another of the individual's certificate;

(x) any other information that may affect the applicant's ability to appropriately perform risk assessments; or

(xi) final disciplinary action, for any violation of lead-based paint activity standards, against the certified individual by another state, territory, federal agency, or country, whether or not voluntarily agreed to by the certified individual, including the denial of certification, surrender of the certificate, allowing the certificate to expire, or discontinuing or restricting the certificate while subject to investigation or while actually under investigation by another state, territory, federal agency, or country.

(C) If an application is denied, the applicant may reapply to KDHE for a risk assessor certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may appeal KDHE's denial to the KDHE hearing section, in accordance with the Kansas administrative procedure act.

(2) Within 180 calendar days after application approval, the applicant shall attain a passing score on the third-party examination for risk assessors.

(A) An applicant shall not sit for the third-party examination for risk assessors more than three times within 180 calendar days after the issuance date of the notice of an approved application.

(B) The applicant's failure to obtain a passing score on the third-party examination for risk assessors within the 180-day period following the notice of an approved application for a certificate shall result in KDHE's denial of the individual's application for a certificate. The individual may reapply to KDHE pursuant to this regulation but only after retaking the KDHE-accredited risk assessor training course.

(3) After the applicant passes the third-party examination, a two-year risk assessor certificate and a photo identification badge shall be issued by KDHE.

(4) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-7. Application process and requirements for the certification of lead abatement workers.** (a) Application for a lead abatement worker certificate.

(1) Each applicant for a lead abatement worker certificate shall submit a completed application to KDHE before consideration for certificate issuance. Each application for certification shall be received by KDHE within one year after successful completion of the lead abatement worker training course. Completed applications shall be mailed to KDHE.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's social security number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the names of the other states, type of certification, certification ex-

piration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(ix) the type of training completed, including the name of the training provider, diploma identification number, and dates of course attendance; and

(x) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the KDHE-accredited lead abatement worker training course completion diploma, and any required refresher course completion diplomas;

(C) two recent, passport-size color photographs of the applicant's face without a hat or sunglasses. Computer-generated or photocopied photographs shall not be acceptable; and

(D) a check or money order made payable to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a lead abatement worker certificate shall apply to KDHE within one year after the applicant's successful completion of the KDHE-accredited lead abatement worker training course, as indicated on the certificate of completion. Applicants failing to apply within one year after the date on the training course completion diploma shall, before making application for certification, successfully complete the eight-hour lead abatement worker refresher training course accredited by KDHE.

(4) An applicant who fails to apply within two years after the lead abatement worker training and who has not successfully completed refresher training shall successfully complete the KDHE-accredited lead abatement worker training course before submitting an application for a lead abatement worker certificate.

(b) Application for a lead abatement worker certificate under reciprocity.

(1) Each applicant for a lead abatement worker certificate by reciprocity shall submit a completed application to KDHE before consideration for certificate issuance. Completed applications shall be mailed to KDHE.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's social security number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the name of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and copy of the EPA certificate; and

(ix) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) two recent, passport-size color photographs of the applicant's face without a hat or sunglasses. Computer-generated or photocopied photographs shall not be acceptable; and

(C) a check or money order made payable to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(c) Training requirements for a lead abatement worker's certificate. Each applicant for a certificate as a lead abatement worker shall complete a KDHE-accredited lead abatement worker training course and pass the course examination with a score of 70% or more. The applicant shall submit a course completion diploma issued by the KDHE-accredited training provider as evidence of meeting this requirement.

(d) Procedure for issuance or denial of a lead abatement worker certificate.

(1) The applicant shall be informed by KDHE in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or

documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice, the applicant shall submit to KDHE, in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in KDHE's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by KDHE in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by KDHE for any of the following reasons:

(i) Failure to satisfy education or experience requirements;

(ii) the type and amount of training;

(iii) false or misleading statements in the application;

(iv) failure to submit a complete application;

(v) three or more citations or violations within the past two years of any existing local, state, or federal lead-based paint activity regulations or standards;

(vi) three or more violations within the past two years of 29 CFR 1926.62 or 29 CFR 1910.1200, as adopted by reference in K.A.R. 28-72-5;

(vii) fraud or failure to disclose facts relevant to the application;

(viii) permitting the duplication or use by another of the individual's certificate;

(ix) any other information that may affect the applicant's ability to appropriately perform lead abatement worker activities; or

(x) final disciplinary action, for any violation of lead-based paint activity standards, against the certified individual by another state, territory, federal agency, or country, whether or not voluntarily agreed to by the certified individual, including the denial of certification, surrender of the certificate, allowing the certificate to expire, or discontinuing or restricting the certificate while subject to investigation or while actually under investigation by another state, territory, federal agency, or country.

(C) If an application is denied, the applicant may reapply to KDHE for a lead abatement



worker certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may appeal KDHE's denial to the KDHE hearing section, in accordance with the Kansas administrative procedure act.

(2) If the application is approved, a two-year lead abatement worker certificate and a photo identification badge shall be issued by KDHE.

(3) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-8. Application process and requirements for the certification of lead abatement supervisors.** (a) Application for a lead abatement supervisor certificate.

(1) Each applicant for a lead abatement supervisor certificate shall submit a completed application to KDHE before consideration for certificate issuance. All applications for certification shall be received by KDHE at least 30 days before the date of the third-party examination, but the deadline for filing applications may be waived by KDHE as particular circumstances justify. Completed applications shall be mailed to KDHE.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's social security number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the names of the other states, type of certification, certification ex-

piration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(ix) the type of training completed, including the name of the training provider, diploma identification number, and dates of course attendance;

(x) any employment history or education that meets the experience requirements specified in subsection (c) of this regulation; and

(xi) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the KDHE-accredited lead abatement supervisor training course completion diploma, and any required refresher course completion diplomas;

(C) two recent passport-size color photographs of the applicant's face without a hat or sunglasses. Computer-generated or photocopied photographs shall not be acceptable;

(D) documentation pursuant to subsection (c) of this regulation as evidence of meeting the education or experience requirements for lead abatement supervisors; and

(E) a check or money order made payable to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a lead abatement supervisor certificate shall apply to KDHE within one year after the applicant's successful completion of the KDHE-accredited lead abatement supervisor training course, as indicated on the course completion diploma. Applicants failing to apply within one year after the date on the training course completion certificate shall, before making application for certification, successfully complete the eight-hour lead abatement supervisor refresher training course accredited by KDHE.

(4) An applicant who fails to apply within two years after the lead abatement supervisor training and who has not successfully completed refresher training shall successfully complete the KDHE-accredited lead abatement supervisor training course before submitting an application for a lead abatement supervisor certificate.

(b) Application for a lead abatement supervisor certificate under reciprocity.

(1) Each applicant for a lead abatement super-

visor certificate by reciprocity shall submit a completed application to KDHE before consideration for certificate issuance. Completed applications shall be mailed to KDHE.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's social security number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the name of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and copy of the EPA certificate;

(ix) any employment history or education that meets the experience requirements in subsection (c) of this regulation; and

(x) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) two recent, passport-size color photographs of the applicant's face without a hat or sunglasses. Computer-generated or photocopied photographs shall not be acceptable; and

(C) a check or money order made payable to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(c) Training and experience requirements for a lead abatement supervisor certificate.

(1) Each applicant for a certificate as a lead abatement supervisor shall complete a KDHE-accredited lead abatement supervisor training course and shall pass the course examination and the third-party examination, each with a score of 70% or more.

(2) Each applicant for a certificate as a lead abatement supervisor shall meet the minimum experience requirements for a certified lead abatement supervisor.

(A) The minimum experience requirements for a lead abatement supervisor certificate shall include at least one of the following:

(i) At least one year of experience as a certified lead abatement worker certified by the secretary, the EPA, or an EPA-approved state;

(ii) at least two years of experience in asbestos abatement work as a construction manager or superintendent;

(iii) at least two years of experience as a manager for environmental hazard remediation projects; or

(iv) at least two years of experience as a supervisor in residential construction.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (c)(2)(A) of this regulation:

(i) Resumes, letters of reference, or documentation of work experience, which shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(ii) course completion diplomas issued by a KDHE-accredited training provider as evidence of meeting the training requirements; and

(iii) a copy of the lead abatement supervisor certificate or identification badge as evidence of having been a certified lead abatement supervisor.

(d) Procedure for issuance or denial of a lead abatement supervisor certificate.

(1) The applicant shall be informed by KDHE in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice, the applicant shall submit to KDHE, in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in KDHE's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be in-

formed by KDHE in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary for any of the following reasons:

(i) Failure to satisfy education or experience requirements;

(ii) the type and amount of training;

(iii) false or misleading statements in the application;

(iv) failure to achieve a passing score on the third-party exam after three attempts;

(v) failure to submit a complete application;

(vi) three or more citations or violations within the past two years of any existing local, state, or federal lead-based paint activity regulations or standards;

(vii) three or more violations within the past two years of 29 CFR 1926.62 or 29 CFR 1910.1200, as adopted by reference in K.A.R. 28-72-5;

(viii) fraud or failure to disclose facts relevant to the application;

(ix) permitting the duplication or use by another of the individual's certificate;

(x) any other information that may affect the applicant's ability to appropriately perform abatement supervisor activities; or

(xi) final disciplinary action, for any violation of lead-based paint activity standards, against the certified individual by another state, territory, federal agency, or country, whether or not voluntarily agreed to by the certified individual, including the denial of certification, surrender of the certificate, allowing the certificate to expire, or discontinuing or restricting the certificate while subject to investigation or while actually under investigation by another state, territory, federal agency, or country.

(C) If an application is denied, the applicant may reapply to KDHE for a lead abatement supervisor certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may appeal KDHE's denial to the KDHE hearing section, in accordance with the Kansas administrative procedure act.

(2) Within 180 calendar days after application

approval, the applicant shall attain a passing score on the third-party examination for lead abatement supervisors.

(A) An applicant shall not sit for the third-party examination for lead abatement supervisors more than three times within 180 calendar days after the issuance date of the notice of an approved application.

(B) The applicant's failure to obtain a passing score on the third-party examination for lead abatement supervisors within the 180-day period following the notice of an approved application for a certificate shall result in KDHE's denial of the individual's application for a certificate. The individual may reapply to KDHE pursuant to this regulation but only after retaking the KDHE-accredited lead abatement supervisor training course.

(3) After the applicant passes the third-party examination, a two-year lead abatement supervisor certificate and a photo identification badge shall be issued by KDHE.

(4) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-9. Application for the certification of project designers.** (a) Application for a project designer certificate.

(1) Each applicant for a project designer certificate shall submit a completed application to KDHE before consideration for certificate issuance. Each application for certification shall be received by KDHE within one year of successful completion of the project designer training course. Completed applications shall be mailed to KDHE.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's social security number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the names of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(ix) the type of training completed, including the name of the training provider, diploma identification number, and dates of course attendance;

(x) any employment history or education that meets the experience requirements in subsection (c) of this regulation; and

(xi) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the KDHE-accredited project designer training course completion diploma, and any required refresher course completion diplomas;

(C) two recent passport-size color photographs of the applicant's face without a hat or sunglasses. Computer-generated or photocopied photographs shall not be acceptable;

(D) documentation pursuant to subsection (c) of this regulation as evidence of meeting the education or experience requirements for project designers; and

(E) a check or money order made payable to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a project designer certificate shall apply to KDHE within one year of the applicant's successful completion of the KDHE-accredited project designer training course, as indicated on the course completion diploma. Applicants failing to apply within one year after the date on the training course completion diploma shall, before making application for certification, successfully complete the four-hour project designer refresher training course accredited by KDHE.

(4) An applicant who fails to apply within two years of the project designer training course and

who has not successfully completed a refresher training course shall successfully complete the KDHE-accredited project designer training course before submitting an application for a project designer certificate.

(b) Application for project designer certificate under reciprocity.

(1) Each applicant for a project designer certificate by reciprocity shall submit a completed application to KDHE before consideration for certificate issuance. Completed applications shall be mailed to KDHE.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's social security number;

(iv) the address where the applicant would like to receive correspondence regarding the application or certification;

(v) the occupation for which the applicant wishes to be certified;

(vi) proof of any certification for lead occupations in other states, including the name of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(vii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and copy of the EPA certificate; and

(viii) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) two recent, passport-size color photographs of the applicant's face without a hat or sunglasses. Computer-generated or photocopied photographs shall not be acceptable; and

(C) a check or money order made payable to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(c) Training, education, and experience requirements for a project designer certificate.

(1) Each applicant for a certificate as a project designer shall complete a KDHE-accredited lead abatement supervisor training course and a



KDHE-accredited project designer course and shall pass both course examinations, each with a score of at least 70%.

(2) Each applicant for a certificate as a project designer shall meet the minimum education and experience requirements for a certified project designer.

(A) The minimum education and experience requirements for a certified project designer shall include at least one of the following:

(i) A bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and design;

(ii) at least one year of experience as a certified project designer, certified by the secretary, the EPA, or an EPA-approved state, and at least two years of experience in building construction and design; or

(iii) at least four years of experience in building construction and design.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (c)(2)(A) of this regulation:

(i) Official academic transcripts or diplomas, as evidence of meeting the education requirements;

(ii) resumes, letters of reference, or documentation of work experience, which shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(iii) course completion diplomas issued by the KDHE-accredited training provider as evidence of meeting the training requirements; and

(iv) a copy of the project designer certificate or identification badge as evidence of having been a certified project designer.

(d) Procedure for issuance or denial of a project designer certificate.

(1) The applicant shall be informed by KDHE in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice, the applicant shall submit to KDHE, in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar

days shall result in KDHE's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by KDHE in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by KDHE for any of the following reasons:

(i) Failure to satisfy education or experience requirements;

(ii) the type and amount of training;

(iii) false or misleading statements in the application;

(iv) failure to submit a complete application;

(v) three or more citations or violations within the past two years of any existing local, state, or federal lead-based paint activity regulations or standards;

(vi) three or more violations within the past two years of 29 CFR 1926.62 or 29 CFR 1910.1200, as adopted by reference in K.A.R. 28-72-5;

(vii) fraud or failure to disclose facts relevant to the application;

(viii) permitting the duplication or use by another of the individual's certificate;

(ix) any other information that may affect the applicant's ability to appropriately perform project designer activities; or

(x) final disciplinary action, for any violation of lead-based paint activity standards, against the certified individual by another state, territory, federal agency, or country, whether or not voluntarily agreed to by the certified individual, including the denial of certification, surrender of the certificate, allowing the certificate to expire, or discontinuing or restricting the certificate while subject to investigation or while actually under investigation by another state, territory, federal agency, or country.

(C) If an application is denied, the applicant may reapply to KDHE for a project designer certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may appeal KDHE's denial to the KDHE hearing section, in accordance with the Kansas administrative procedure act.

(2) If the application is approved, a two-year project designer certificate and a photo identification badge shall be issued by KDHE.

(3) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-10. Application process and licensure renewal requirements for lead activity firms.** (a) Application for a lead activity firm license.

(1) Each applicant for a lead activity firm license shall submit a completed application to KDHE before consideration for license issuance. Completed applications shall be mailed to KDHE.

(2) The application shall include the following:

(A) A completed lead activity firm application on a form provided by KDHE, which shall include the following:

(i) The applicant's name, address, and telephone number;

(ii) if the applicant is a sole proprietorship, the applicant's social security number or, if the applicant is a corporation, the applicant's federal employee identification number;

(iii) the county or counties in which the applicant is located;

(iv) a description of any lead-based paint activities that the applicant will be conducting, including lead inspection, risk assessments, lead abatement projects, and project design;

(v) a certification that the lead activity firm will employ only appropriately KDHE-certified individuals to conduct lead-based paint activities; and

(vi) a certification that the lead activity firm and its employees will follow the Kansas work practice standards for lead-based paint activities specified in K.A.R. 28-72-13 through K.A.R. 28-72-21;

(B) if the applicant is a corporation, a copy of its registration with the Kansas secretary of state's office. Each corporation desiring a license as a lead activity firm under the act shall be registered and in good standing with the Kansas secretary of state's office;

(C) if the applicant conducts business under a fictitious name, a copy of its fictitious name reg-

istration, which shall be registered with the Kansas secretary of state's office; and

(D) a check or money order made payable to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3, unless the lead activity firm is exempt from this fee because the firm is a state, federally recognized Indian tribe, local government, or nonprofit organization.

(b) Procedure for issuance or denial of a lead activity firm license.

(1) The applicant shall be informed by KDHE in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice, the applicant shall submit to KDHE, in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in KDHE's denial of the firm's application for licensure.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by KDHE in writing that the application is either approved or denied.

(B) If an application for licensure is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Licensure may be denied by KDHE for any of the following reasons:

(i) False or misleading statements in the application;

(ii) failure to submit a complete application;

(iii) three or more citations or violations within the past two years, by the firm's president, officers, or employees, of any existing local, state, or federal lead-based paint activity regulations or standards;

(iv) three or more violations within the past two years by the firm's president, officers, or employees of 29 CFR 1926.62 or 29 CFR 1910.1200, as adopted by reference in K.A.R. 28-72-5;

(v) fraud or failure to disclose facts relevant to the application;

(vi) permitting the duplication or use by another of the firm's license;

(vii) any other information that may affect the applicant's ability to appropriately perform lead abatement activities; or

(viii) final disciplinary action, for any violation of lead-based paint activity standards, against the firm by another state, territory, federal agency, or country, whether or not voluntarily agreed to by the firm, including the denial of licensure, surrender of the license, allowing the license to expire, or discontinuing or restricting the license while subject to investigation or while actually under investigation by another state, territory, federal agency, or country.

(C) If an application is denied, the applicant may reapply to KDHE for a lead activity firm license by submitting a complete lead activity firm application form with another nonrefundable license fee, as specified in K.A.R. 28-72-3.

(D) After notice of a complete application, a two-year lead activity firm license shall be issued by KDHE.

(E) If an applicant is aggrieved by a determination to deny licensure, the applicant may appeal the secretary's denial to the KDHE hearing section, in accordance with the Kansas administrative procedure act.

(F) A license may be issued with specified restrictions pursuant to an agreement between the applicant and KDHE.

(2) Change of ownership. If a licensed lead activity firm changes ownership, the new owner shall notify KDHE in writing no later than 30 calendar days before the change of ownership becomes effective. The notification shall include a new lead activity firm license application, the appropriate fee, and the date that the change of ownership will become effective. The new lead activity firm application shall be processed in the same manner as that required for an initial license, in accordance with this regulation. The current lead activity firm's license shall expire on the effective date set forth in the notification of the change of ownership.

(3) Renewal application for a lead activity firm license. A completed application for a lead activity firm license renewal shall be mailed to KDHE at least 60 days before the expiration date on the license, accompanied by the nonrefundable renewal fee specified in K.A.R. 28-72-3. However, any lead activity firm that is a state, federally recognized Indian tribe, local government, or non-profit organization shall be exempt from payment of this fee. If the licensee fails to apply at least 60 days before the license expiration date, renewal of the license before the end of the licensing period shall not be guaranteed by KDHE.

(4) Expiration of license. If a licensed lead activity firm allows its license to expire, the firm shall be required to submit an application in the same manner as that required for an application for an initial license, in accordance with this regulation. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-11. Renewal of lead occupation certificates.** (a) Renewal application for lead inspector, risk assessor, lead abatement supervisor, lead abatement worker, and project designer.

(1) If a certified individual wishes to renew a lead occupation certificate, the individual shall submit a completed application for renewal of certificate, including the required supporting documentation, to KDHE at least 60 days before the certificate's expiration date as indicated on the certificate. Failure of the certified individual to submit an application at least 60 days before the certificate's expiration date may result in the certificate not being renewed before the current license expires.

(2) The certified individual applying for renewal shall complete the eight-hour KDHE-accredited training course for the appropriate occupation.

(3) Each renewal application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the certified individual's social security number;

(iv) the county or counties in which the certified individual is employed;

(v) the address where the certified individual would like to receive correspondence regarding the certification;

(vi) the lead occupation certificate that the applicant wishes to have renewed;

(vii) the type of refresher training course completed, including the name of the training provider, diploma identification number, and dates of course attendance; and

(viii) the signature of the applicant, which shall

certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the KDHE-accredited refresher training course completion diploma for the appropriate occupation;

(C) two recent, passport-size color photographs of the applicant's face without a hat or sunglasses. Computer-generated or photocopied photographs shall not be acceptable; and

(D) a check or money order made payable to KDHE for the appropriate nonrefundable recertification fee, as specified in K.A.R. 28-72-3.

(b) Procedure for issuance or denial of a renewal lead occupation certificate.

(1) The applicant shall be informed by KDHE in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the renewal application.

(i) Within 30 calendar days after the issuance date of the notice, the applicant shall submit to KDHE, in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days after the issuance of the notice, shall result in KDHE's denial of the individual's application for recertification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by KDHE in writing that the application is either approved or denied.

(B) If a renewal application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for denial. Certification may be denied by KDHE for any of the following reasons:

(i) Failure to satisfy education or experience requirements;

(ii) the type and amount of training;

(iii) false or misleading statements in the application;

(iv) failure to submit a complete application;

(v) three or more citations or violations within the past two years of any existing local, state, or federal lead-based paint activity regulations or standards;

(vi) three or more violations within the past two years of 29 CFR 1926.62 or 29 CFR

1910.1200, as adopted by reference in K.A.R. 28-72-5;

(vii) fraud or failure to disclose facts relevant to the application;

(viii) permitting the duplication or use by another of the individual's training certificate;

(ix) any other information that may affect the applicant's ability to appropriately perform lead abatement activities; or

(x) final disciplinary action, for any violation of lead-based paint activity standards, against the certified individual by another state, territory, federal agency, or country, whether or not voluntarily agreed to by the certified individual, including the denial of certification, surrender of the certificate, allowing the certificate to expire, or discontinuing or restricting the certificate while subject to investigation or while actually under investigation by another state, territory, federal agency, or country.

(C) If a renewal application is denied, the applicant may reapply to KDHE for a lead occupation certificate by submitting a complete lead occupation application form with the appropriate nonrefundable recertification fee, as specified in K.A.R. 28-72-3.

(2) If an applicant is aggrieved by a determination to deny certification, the applicant may appeal KDHE's denial to the KDHE hearing section, in accordance with the Kansas administrative procedure act.

(3) After notice of a complete renewal application, a two-year certificate and a photo identification badge shall be issued by KDHE.

(4) A certificate may be issued with specific restrictions pursuant to an agreement between the certified individual and KDHE. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

### **28-72-12. Application process and requirements for reapplication after certificate expiration.**

(a) Unless renewed or revoked sooner, a certificate shall expire two years after its effective date indicated on the current certificate. If a certified individual allows the certificate to expire before renewal but desires to be certified, the individual shall reapply to KDHE. Completed applications shall be mailed to KDHE.

(b) Each application shall include the following:



(1) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(A) The applicant's full legal name, home address, and telephone number;

(B) the name, address, and telephone number of the applicant's current employer;

(C) the applicant's social security number;

(D) the county or counties in which the applicant is employed;

(E) the address where the applicant would like to receive correspondence regarding the application or certification;

(F) the occupation for which the applicant wishes to be certified;

(G) proof of any certification for lead occupations in other states, including the names of the other states, type of certification, certification expiration date, certificate number, and copies of other states' certificate or license;

(H) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and copy of the EPA certificate;

(I) the type of training completed, including the name of the training provider, diploma identification number, and dates of course attendance;

(J) any employment history or education that meets the experience requirements in K.A.R. 28-72-5 through K.A.R. 28-72-9, as applicable; and

(K) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(2) a copy of the KDHE-accredited lead occupation training course completion diploma for the appropriate occupation;

(3) two recent passport-size color photographs of the applicant's face without a hat or sunglasses. Computer-generated or photocopied photographs shall not be acceptable; and

(4) a check or money order made payable to KDHE for the nonrefundable certification fee appropriate to the lead occupation, as specified in K.A.R. 28-72-3.

(c)(1) Any applicant who fails to reapply before the certificate expiration date and who has not successfully completed a refresher training course shall successfully complete the appropriate KDHE-accredited initial training course again.

(2) Any certified lead inspector, risk assessor, or lead abatement supervisor who allows the cer-

tification to expire before renewal shall retake the third-party examination for the appropriate occupation.

(d) The procedure for issuance or denial of a certificate after its expiration shall be that specified in K.A.R. 28-72-11(b). (Authorized by K.S.A. 2000 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-13. Work practice standards; general standards.** (a) Except as provided in K.S.A. 65-1,203 and amendments thereto, all lead-based paint activities, as defined in the act, shall be performed pursuant to the work practice standards contained in this article.

(b) Except as provided in K.S.A. 65-1,203 and amendments thereto, when performing any lead-based paint activity that involves an inspection, lead-hazard screen, risk assessment, or abatement, a certified individual shall perform that activity in compliance with the appropriate requirements below.

(c) Conflict of interest. Certified lead inspectors and risk assessors conducting lead inspection activities shall avoid potential conflicts of interest by not being contracted, subcontracted, or employed by any lead activity firm performing lead abatement activities on the same lead abatement project.

(d)(1) Each certified individual shall comply with the following documented methodologies, which are hereby adopted by reference, when performing any lead-based paint activity:

(A) The U.S. department of housing and urban development (HUD) "guidelines for the evaluation and control of lead-based paint hazards in housing," dated June 1995, including appendices 7, 8, 11, 12, 13, and 14. Chapter 7 in the June 1995 edition is not adopted; instead, the 1997 revision of chapter 7 is adopted;

(B) the EPA "guidance on identification of lead-based paint hazards; notice," published September 11, 1995; and

(C) the EPA "residential sampling for lead: protocols for dust and soil sampling" (EPA final report no. 747-R-95-001 and MRI project no. 9803), published March 29, 1995.

(2) If a conflict exists between any of the aforementioned methodologies and any federal or state statute or regulation, or any city or county ordinance, the most stringent of these shall be ad-

hered to by the certified lead inspector or risk assessor. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-14. Work practice standards; inspection.** (a) Except as provided in K.S.A. 65-1,203, and amendments thereto, a lead inspection or any portion of a lead inspection shall be conducted only by a person certified by KDHE as a lead inspector or risk assessor, and all inspections shall be conducted according to the procedures specified in this regulation.

(b) When conducting an inspection, the lead inspector or risk assessor shall select the following locations according to the documented methodologies in K.A.R. 28-72-13 (d)(1) and shall test for the presence of lead-based paint:

(1) In a residential dwelling and child-occupied facility, each interior component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the lead inspector or risk assessor determines to have been replaced after 1978, or not to contain lead-based paint; and

(2) in a multifamily dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the lead inspector or risk assessor determines to have been replaced after 1978, or not to contain lead-based paint.

(c)(1) Paint shall be sampled according to both of the following requirements:

(A) The analysis of paint to determine the presence of lead shall be conducted using the documented methodologies in K.A.R. 28-72-13 (d)(1).

(B) All collected paint chip samples shall be analyzed according to K.A.R. 28-72-19 of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(2) The certified inspector or risk assessor shall prepare an inspection report, which shall include the following information:

(A) The date of each inspection;

(B) the address of the building;

(C) the date of the construction;

(D) apartment numbers, if applicable;

(E) the name, address, and telephone number of the owner or owners of each residential dwelling;

(F) the name, signature, and certificate number of each certified lead inspector or risk assessor, or both, conducting testing;

(G) the name, address, and telephone number of the licensed lead activity firm employing each lead inspector or risk assessor, or both, if applicable;

(H) each testing method and device or sampling procedure, or both, employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device and a copy of the XRF device user's certificate of training provided by the equipment manufacturer;

(I) a summary of laboratory results, categorized as positive or negative, and the name of each recognized laboratory that conducted the analysis, along with the laboratory's certification number;

(J) floor plans or sketches of the units inspected, showing the appropriate test locations and any identifying number systems;

(K) a summary of the substrates tested, including the identification of component, component integrity, paint condition and color, and test identification numbers associated with the results; and

(L) the results of the inspection expressed in terms appropriate to the sampling method used.

(d) Time frame for submission of reports. The inspection report shall be provided to the owner of the property within 20 business days after completion of the lead inspection. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-15. Work practice standards; lead hazard screen.** (a) Except as provided in K.S.A. 65-1,203, and amendments thereto, a lead hazard screen shall be conducted only by a person certified by KDHE as a risk assessor.

(b) If a lead hazard screen is conducted, the risk assessor shall conduct each lead hazard screen as follows:

(1) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant-use patterns that may cause lead-based paint exposure to one or more children through the age of 72 months shall be collected.

(2) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to achieve the following:

(A) Determine if any deteriorated paint is present; and

(B) locate at least two dust sampling locations.

(3) If deteriorated paint is present, each surface with deteriorated paint that is determined, using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1), to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead.

(4) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways, or stairwells where one or more children through the age of 72 months are most likely to come in contact with dust.

(5) In multifamily dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (b)(4) of this regulation, the risk assessor shall also collect composite dust samples from common areas where one or more children through the age of 72 months are most likely to come into contact with dust.

(c) Dust samples shall be collected and analyzed in the following manner:

(1) All dust samples shall be taken using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1).

(2) All collected dust samples shall be analyzed according to K.A.R. 28-72-19 to determine if they contain detectable levels of lead that can be quantified numerically.

(d) Paint shall be sampled according to both of the following requirements:

(1) The analysis of paint to determine the presence of lead shall be conducted using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1).

(2) All collected paint chip samples shall be analyzed according to K.A.R. 28-72-19 to determine if they contain detectable levels of lead that can be quantified numerically.

(e) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

- (1) The date of the assessment;
- (2) the address of each building;
- (3) the date of construction of each building;
- (4) the apartment number, if applicable;
- (5) the name, address, and telephone number of each owner of each building;
- (6) the name, signature, and certificate num-

ber of the certified risk assessor conducting the assessment;

(7) the name, address, and telephone number of each recognized laboratory conducting analysis of collected samples, along with the laboratory's certificate number;

(8) the results of the visual inspection;

(9) the testing method and sampling procedure employed for the paint analysis;

(10) specific locations of each paint component tested for the presence of lead;

(11) all data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device, and a copy of the XRF device user's certificate of training provided by the equipment manufacturer;

(12) all results of laboratory analysis on collected paint, soil, and dust samples;

(13) any other sampling results;

(14) any background information collected regarding the physical characteristics of the residential dwelling or multifamily dwelling and occupant-use patterns that may cause lead-based paint exposure to one or more children through the age of 72 months; and

(15) recommendations, if warranted, for a follow-up risk assessment and, as appropriate, any further actions.

(f) Time frame for submission of reports. The lead hazard screen report shall be provided to the owner of the property within 20 business days after completion of the lead hazard screen. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-16. Work practice standards; risk assessment.** (a) Except as provided by K.S.A. 65-1,203, and amendments thereto, a risk assessment shall be conducted only by a person certified by KDHE according to K.A.R. 28-72-2 and K.A.R. 28-72-5 through K.A.R. 28-72-12 as a risk assessor. If a risk assessment is conducted, the assessment shall be conducted according to the procedures specified in this regulation.

(b) A visual inspection of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and assess other potential lead-based paint hazards.

(c) Background information regarding the physical characteristics of the residential dwelling

or child-occupied facility and occupant-use patterns that could cause lead-based paint exposure to one or more children through the age of 72 months shall be collected.

(d) Each surface with deteriorated paint that is determined, using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1), to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead. Each other surface determined, using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1), to be a potential lead-based paint hazard and to have a distinct painting history shall also be tested for the presence of lead.

(e) In residential dwellings, dust samples, either composite or single-surface samples, from the window and floor shall be collected in all living areas where one or more children through the age of 72 months are most likely to come into contact with dust.

(f) For multifamily dwellings and child-occupied facilities, the samples required in subsection (e) of this regulation shall be taken. In addition, window and floor dust samples, either composite or single-surface samples, shall be collected in the following locations:

(1) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(2) other common areas in the building where the risk assessor determines that one or more children through the age of 72 months are likely to come into contact with dust.

(g) For child-occupied facilities, window and floor dust samples, either composite or single-surface samples, shall be collected in each room, hallway, or stairwell utilized by one or more children through the age of 72 months and in other common areas in the child-occupied facility where the risk assessor determines that one or more children through the age of 72 months are likely to come into contact with dust.

(h) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(1) Exterior play areas where bare soil is present; and

(2) dripline or foundation areas where bare soil is present.

(i) All paint, dust, or soil sampling or testing shall be conducted using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1).

(j) All collected paint chip, dust, or soil samples

shall be analyzed according to K.A.R. 28-72-19 to determine if the samples contain detectable levels of lead that can be quantified numerically.

(k) The certified risk assessor shall prepare a risk assessment report, which shall include the following information:

(1) The date of the assessment;

(2) the address of each building;

(3) the date of construction of the buildings;

(4) the apartment number, if applicable;

(5) the name, address, and telephone number of each owner of each building;

(6) the name, signature, and certificate number of the certified risk assessor conducting the assessment;

(7) the name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples, along with the laboratory's certificate number;

(8) the results of the visual inspection;

(9) the testing method and sampling procedure used for each paint analysis;

(10) specific locations of each painted component tested for the presence of lead;

(11) all data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device and a copy of the XRF device user's certificate of training provided by the equipment manufacturer;

(12) all results of laboratory analysis on collected paint, soil, and dust samples;

(13) any other sampling results;

(14) any background information collected pursuant to subsection (c) of this regulation;

(15) to the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards;

(16) a description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(17) a description of interim controls or abatement options, or both, for each identified lead-based paint hazard and the suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(l) Time frame for submission of reports. The risk assessment report shall be provided to the owner of the property and to the person requesting the risk assessment within 20 business days



after completion of the lead-based paint hazard risk assessment. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-17. Work practice standards; elevated blood lead level investigation risk assessments.** (a) In order to perform an elevated blood lead (EBL) level investigation risk assessment, the EBL inspector shall have a certificate from KDHE.

(b) The EBL inspector shall have the parents or guardians of the EBL child complete an approved KDHE questionnaire before sampling. Environmental testing shall be linked to the EBL child's history and may include the testing of a prior residence or other areas frequented by the EBL child.

(c) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant-use patterns that may cause lead-based paint exposure to one or more children through the age of 72 months shall be collected.

(d) Each surface on the dwelling itself, furniture, or play structures frequented by the EBL child that has deteriorated surface coatings shall be tested for the presence of lead.

(e) Dust samples from areas frequented by the EBL child, including play areas, porches, kitchens, bedrooms, and living and dining rooms, shall be collected. Dust samples shall also be collected from automobiles, work shoes, and laundry rooms if occupational lead exposure is a possibility.

(f) Soil samples shall be collected from bare soil areas of play, areas near the foundation of the house, and areas from the yard. If the EBL child spends significant time at the park or other play area, samples shall be collected from these areas, unless the area has already been sampled and documented.

(g) If necessary, water samples of the first-drawn water from the tap most commonly used for drinking water, infant formula, or food preparation shall be collected.

(h) All paint, dust, and soil collection and testing shall be conducted using the documented methodologies in K.A.R. 28-72-13 (d)(1). (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202 and 65-

1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-18. Work practice standards; lead abatement.** (a) Except as provided in K.S.A. 65-1,203, and amendments thereto, a lead abatement shall be conducted only by an individual certified by KDHE and shall be conducted according to the procedures specified in this article.

(b) A certified lead abatement supervisor shall be required for each lead abatement project and shall be on-site during all work-site preparation and during the postabatement cleanup of work areas. At all other times when lead abatement activities are being conducted, the certified lead abatement supervisor shall be on-site or available by telephone, pager, or answering service, and shall be able to be present at the work site in no more than one hour.

(c) The certified lead abatement supervisor and licensed lead activity firm employing that supervisor shall ensure that all lead abatement activities are conducted according to the requirements of the Kansas work practice standards in this article and all other federal, state, and local requirements.

(d) Notification of the commencement of lead-based paint activities in a residential dwelling or child-occupied facility or as the result of a federal, state, or local order shall be given to KDHE before the commencement of abatement activities. The procedure for this notification shall be as follows:

(1) Any person or lead activity firm conducting a lead abatement project in target housing or in any child-occupied facility shall submit a notification to KDHE at least 10 business days before the onset of the lead abatement project.

(2) The notification shall be mailed to KDHE with a check or money order made payable to the Kansas department of health and environment for the nonrefundable project fee specified in K.A.R. 28-72-3.

(3) The notification form provided to the department shall include the following:

(A) The street address, city, state, zip code, and county of each location where lead abatement will occur;

(B) the name, address, and telephone number of the property owner;

(C) an indication of the type of structure or structures being abated, including single-family or

multifamily dwelling, child-occupied facility, or any combination of these types;

(D) the date of the onset of the lead abatement project;

(E) the estimated completion date of the lead abatement project;

(F) the work days and hours of operation during which the lead abatement project will be conducted;

(G) the name, address, telephone number, and license number of the lead activity firm;

(H) the name and certificate number of each lead abatement worker;

(I) the type or types of lead abatement strategy or strategies that will be utilized, including enclosure, encapsulation, replacement, removal, or any combination of these strategies, and the specific locations within the unit where these strategies will be utilized;

(J) the signature of each lead abatement supervisor, which shall certify that all information provided in the project notification is complete and true to the best of the supervisor's knowledge; and

(K) a written certification from the lead abatement supervisor, within 10 days after successfully achieving clearance, that clearly states that all abatement control options were conducted in accordance with all local, state, and federal regulations, as well as in accordance with the preabatement notification letter submitted to KDHE.

(e) Emergency notification. If the lead activity firm is unable to comply with the 10-day notification period in the event of an emergency situation, the lead activity firm shall perform the following:

(1) Notify KDHE by telephone, facsimile, or electronic mail within 24 hours after the onset of the lead abatement project; and

(2) submit written notification and payment of fees as described in subsection (d) of this regulation no more than five business days after the onset of the lead abatement project.

(f) A written occupant protection plan, which shall be unique to each residential dwelling or child-occupied facility, shall be developed before the lead abatement begins. The occupant protection plan shall describe the measures and management procedures that will be taken during the lead abatement to protect the building occupants from exposure to any lead-based paint hazards.

(1) The certified lead abatement supervisor or

project designer responsible for the project shall prepare the occupant protection plan.

(2) The occupant protection plan shall meet the following requirements:

(A) Describe the work practices and strategies that will be taken during the lead abatement project to protect the building occupants from exposure to any lead hazards;

(B) include the results of any lead inspections or risk assessments completed before the commencement of the lead abatement project;

(C) be provided to an adult occupant of each dwelling or dwelling unit being abated and to the property owner, or property owner's designated representative, before the commencement of the lead abatement project; and

(D) be submitted to KDHE with the lead abatement project notification.

(g) The work practices listed below shall be restricted as follows:

(1) Open-flame burning or torching of lead-based paint shall be prohibited.

(2) Machine sanding or grinding, or abrasive blasting or sandblasting of lead-based paint shall be prohibited unless used with high efficiency particulate air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency.

(3) Dry scraping of lead-based paint shall be permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any one room, hallway, or stairwell, or totaling no more than 20 square feet on exterior surfaces.

(4) Operating a heat gun on lead-based paint shall be permitted only at temperatures below 1,100° Fahrenheit.

(5) Hydro blasting or pressurized water washing of lead-based paint without containment and water collection and filtering shall be prohibited.

(6) The use of methylene chloride-based chemical strippers shall be prohibited.

(7) Solvents that have flashpoints below 140° Fahrenheit shall be prohibited.

(8) Enclosure strategies shall be prohibited if the barrier is not warranted by the manufacturer to last at least 20 years under normal conditions or if the primary barrier is not a solid barrier.

(9) Encapsulation strategies shall be prohibited if the encapsulant is not warranted by the manufacturer to last at least 20 years under normal con-

ditions or if the encapsulant has been improperly applied.

(h) Permissible lead abatement project strategies. Strategies that shall be permissible for lead abatement projects are the following: replacement, enclosure, encapsulation, and removal. Any lead abatement strategy not specified in this article shall be submitted to and approved by KDHE for evaluation before implementation. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-18a. Work practice standards; lead abatement: replacement.** When conducting a lead abatement project using the replacement strategy, the certified lead professional or licensed firm shall meet the following minimum requirements:

(a) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified lead professionals and the general public from approaching closer than 20 feet to the replacement operation.

(b) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering not smaller than two inches tall, with additional language or symbols prohibiting entry to the regulated area by uncertified lead professionals and the general public. All signs shall be in a language that is easily recognizable by all certified lead professionals and by members of the general public where the lead abatement activities are taking place.

(c) Any heating and cooling system within the regulated area shall be shut down and the vents sealed with 6-mil poly to prevent lead dust accumulation within the system.

(d) All items shall be cleaned within the regulated area by HEPA vacuuming or wet wiping with a cleaning solution, or both. Items shall then be either removed from the area or covered with 6-mil poly and sealed with duct tape, to provide an airtight and watertight seal.

(e) At least two layers of 6-mil, or thicker, poly shall be placed on the floor at the base of the component and extend at least 10 feet beyond the perimeter of the component to be replaced.

(f) The component, and the area immediately adjacent to the component, shall be thoroughly wetted using a garden sprayer, airless mister, or other appropriate means to reduce airborne dust.

(g) After removal of the component, the surface behind the removed component shall be thoroughly wetted to reduce airborne dust.

(h) The component shall be wrapped or bagged completely in 6-mil poly and sealed with duct tape to prevent loss of debris or dust.

(i) Before installing a new component, the area of replacement shall be cleaned by HEPA vacuuming the area again. Cleaning shall begin at the end of the work area farthest from the main entrance to the area and from the top to the bottom of the regulated area. (Authorized by and implementing L. 1999, Ch. 99, Sec. 4; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000.)

**28-72-18b. Work practice standards; lead abatement: enclosure.** When conducting a lead abatement project using the enclosure strategy, the certified lead professional or licensed firm shall meet the following minimum requirements:

(a) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified lead professionals and the general public from approaching closer than 20 feet to the enclosure operation.

(b) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering not smaller than two inches tall, with additional language or symbols prohibiting entry to the regulated area by uncertified lead professionals and the general public. All signs shall be in a language that is easily recognized by all certified lead professionals and by members of the general public where the lead abatement activities are taking place.

(c) Any heating and cooling systems within the regulated area shall be shut down and the vents sealed with 6-mil poly to prevent lead dust accumulation within the system.

(d) All items shall be cleaned within the regulated area by HEPA vacuuming or wet wiping with a cleaning solution, or both. Items shall then be either removed from the area or covered with 6-mil poly and sealed with duct tape.

(e) At least one layer of 6-mil, or thicker, poly

shall be placed on the floor at the base of the component and extend at least 10 feet beyond the perimeter of the component to be enclosed.

(f) The surface to be enclosed shall be labeled behind the enclosure horizontally and vertically, approximately every two feet with this warning: "Danger: Lead-Based Paint," in permanent ink.

(g)(1) The enclosure shall be applied directly onto the painted surface, or a frame shall be constructed of wood or metal, using nails, staples, or screws. Glue may be used in conjunction with the aforementioned fasteners, but shall not be used alone. All enclosure items shall be back-caulked at all edges, seams, and abutment edges.

(2) The material used for the enclosure barrier shall be solid and rigid enough to provide adequate protection. Wallpaper, contact paper, films, folding walls, drapes, and similar materials shall not meet this requirement.

(3) Enclosure systems and their adhesives shall be designed to last at least 20 years.

(4) The substrate or building structure to which the enclosure is fastened shall be structurally sufficient to support the enclosure barrier for at least 20 years. If there is deterioration of the substrate or building structure that may impair the enclosure from remaining dust-tight for a minimum of 20 years, the substrate or building structure shall be repaired before attaching the enclosure. This deterioration may include mildew, water damage, dry rot, termite damage, or any significant structural damage.

(h) Preformed steel, aluminum, vinyl, or other construction material may be used for window frames, exterior siding, trim casings, column enclosures, moldings, or other similar components if they can be sealed.

(i) A material equivalent to ¼-inch rubber or vinyl may be used to enclose stairs.

(j) The seams, edges, and fastener holes shall be sealed with caulk or other sealant, providing a dust-tight system.

(k) All equipment used in the regulated area shall be thoroughly cleaned with a cleaning solution or vacuumed with a HEPA vacuum, or both, before removal from the regulated area.

(l) Before clearance, the installed enclosure and surrounding regulated area shall be cleaned by vacuuming with a HEPA vacuum, wiping down all surfaces with a cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area again. Cleaning shall begin at the end of the work area

farthest from the main entrance to the area and from the top to the bottom of the regulated area.

(m) All enclosure systems used shall meet all applicable building codes, as well as fire, health, safety, and environmental regulations. (Authorized by and implementing L. 1999, Ch. 99, Sec. 4; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000.)

**28-72-18c. Work practice standards; lead abatement: encapsulation.** (a) The encapsulation strategy of lead abatement shall not be used on the following:

(1) Friction surfaces, including window sashes and parting beads, door jambs and hinges, floors, and door thresholds;

(2) deteriorated components, including rotten wood, rusted metal, spalled or cracked plaster, or loose masonry;

(3) impact surfaces, including doorstops, window wells, and headers;

(4) deteriorated surface coatings if the adhesion or cohesion of the surface coating is uncertain or indeterminable; and

(5) incompatible coatings.

(b) When conducting a lead abatement project using the encapsulation strategy, the certified personnel or licensed firm shall comply with the following minimum requirements:

(1) The certified lead professional or licensed firm shall select an encapsulant that is a low volatile organic compound (V.O.C.), that is warranted by the manufacturer to last for at least 20 years, and that complies with all applicable building codes as well as fire, health, and environmental regulations.

(2) Surfaces to be encapsulated shall have sound structural integrity with no loose, chipping, peeling, or chalking paint and no dust accumulation that cannot be cleaned, and shall be prepared according to the manufacturer's recommendations.

(3) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified lead professionals and the general public from approaching closer than 20 feet to the encapsulation operation.

(4) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering not smaller than two inches tall, with additional lan-



guage or symbols prohibiting entry to the regulated area by uncertified lead professionals and the general public. All signs shall be in a language that is easily recognized by all certified lead professionals and by members of the general public where the lead abatement activities are taking place.

(5) Any heating and cooling systems within the regulated area shall be shut down and the vents sealed with 6-mil poly to prevent lead dust accumulation within the system.

(6) All items shall be cleaned within the regulated area by HEPA vacuuming or wet wiping with a cleaning solution, or both. Items shall then be either removed from the area or covered with 6-mil poly sheeting and sealed with duct tape.

(7) At least two layers of 6-mil, or thicker, poly shall be placed on the ground at the base of the component and shall extend at least 10 feet beyond the perimeter of the component to be encapsulated.

(8) A patch test shall be conducted in accordance with the HUD guidelines adopted by reference in K.A.R. 28-72-13 (d)(1) before general application of the encapsulant to determine the adhesive and cohesive properties of the encapsulant on the surface to be encapsulated. The encapsulant shall be applied in accordance with the manufacturer's recommendations.

(9) After the manufacturer's recommended curing time, the entire encapsulated surface shall be inspected by a certified lead abatement supervisor or a certified project designer. Any unacceptable areas shall be evaluated to determine if a complete failure of the system is indicated, or if the system can be patched or repaired. Unacceptable areas shall be evidenced by delamination, wrinkling, blistering, cracking, cratering, and bubbling of the encapsulant.

(10) After the encapsulation is complete, the regulated area shall be cleaned by vacuuming with a HEPA vacuum, wiping down all surfaces with a cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area again. Cleaning shall begin at the end of the work area farthest from the main entrance to the area and from the top to the bottom of the regulated area.

(11) All equipment used in the regulated area shall be thoroughly cleaned with a cleaning solution or vacuumed with a HEPA vacuum, or both, before removal from the regulated area. (Authorized by and implementing L. 1999, Ch. 99, Sec.

4; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000.)

**28-72-18d. Work practice standards; lead abatement: removal.** (a) Acceptable removal strategies shall include the following:

(1) Manual wet strategies. Manual wet scraping or manual wet sanding shall be acceptable for the removal of lead surface coatings.

(2) Mechanical removal strategies. Using power tools that are HEPA-shrouded or locally exhausted shall be acceptable removal strategies for lead surface coatings. HEPA-shrouded or exhausted mechanical abrasion devices, including sanders, saws, drills, roto-peens, vacuum blasters, and needle guns shall be acceptable.

(3) Chemical removal strategies. Chemical strippers shall be used in compliance with manufacturer's recommendations.

(b) Soil abatement. When soil abatement is conducted, the lead-bearing soil shall be removed, tilled, or permanently covered in place as indicated in this subsection.

(1) Removed soil shall be replaced with fill material containing no more than 100 ppm of lead. If the fill material exceeds 100 ppm lead, the fill material shall be acceptable only if the lead solubility is less than 5ppm. Soil that is removed shall not be reused as topsoil in another residential yard.

(2) If tilling is selected, soil in a child-accessible area shall be tilled to a depth that results in no more than 400 ppm lead of the homogenized soil, or other concentrations approved by the department. Soil in an area not accessible to children shall be tilled to a depth that results in no more than 2,000 ppm lead of the homogenized soil, or other concentrations approved by the department.

(3) Permanent soil coverings shall include solid materials, including pavement or concrete. Grass, mulch, and other landscaping materials shall not be considered permanent covering.

(4) Soil abatement shall be conducted to prevent lead-contaminated soil from being blown from the site or from being carried away by water runoff or through percolation to groundwater.

(c) Interior removal. When conducting a lead abatement project using the removal strategy on interior surfaces, the certified lead professional or licensed firm shall meet the following minimum requirements:

(1) The site shall be prepared by first establish-

ing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified lead professionals and the general public from approaching closer than 20 feet to the removal operation.

(2) Signs shall be posted at all entrances to the regulated area and shall include the words “WARNING: LEAD AREA. POISON. NO SMOKING OR EATING” in bold lettering not smaller than two inches tall, with additional language or symbols prohibiting entrance to the regulated area by uncertified lead professionals and the general public. All signs shall be in a language that is easily recognized by all certified lead professionals and by members of the general public where the lead abatement activities are taking place.

(3) Each heating and cooling system within the regulated area shall be shut down and the vents sealed with 6-mil poly to prevent lead dust accumulation within the system.

(4) All items within the regulated area shall be cleaned by HEPA vacuuming or wet wiping with a cleaning solution, or both. Items shall then be either removed from the area or covered with 6-mil poly and sealed with duct tape.

(5) All windows below and within the regulated area shall be closed.

(6) A critical barrier shall be constructed.

(7) At least two layers of 6-mil, or thicker, poly shall be placed on the floor at the base of the component and shall extend at least 10 feet beyond the perimeter of the component being abated. If the chemical strategy is used, the certified lead professional or licensed firm shall follow the manufacturer’s recommendations regarding a chemical-resistant floor cover.

(8) All equipment used in the regulated area shall be thoroughly cleaned with a cleaning solution or vacuumed with a HEPA vacuum, or both, before removal from the regulated area.

(9) At the end of each work shift, the top layer of 6-mil poly shall be removed and used to wrap and contain the debris generated by the shift. The 6-mil poly shall then be sealed with duct tape and kept in a secured area until final disposal. The second layer of 6-mil poly shall be HEPA vacuumed, left in place, and used during the next shift. A single layer of 6-mil poly shall be placed on this remaining poly before lead abatement resumes.

(10) After the removal is complete, the regulated area shall be cleaned by vacuuming with a HEPA vacuum, wiping down all surfaces with a

cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area again. Cleaning shall begin at the end of the work area farthest from the entrance to the area and from the top to the bottom of the regulated area.

(d) Exterior removal. When conducting a lead abatement project using the removal strategy on exterior surfaces, these minimum requirements shall be met:

(1) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified lead professionals and the general public from approaching closer than 20 feet to the removal operation.

(2) Signs shall be posted at all entrances to the regulated area and shall include the words “WARNING: LEAD AREA. POISON. NO SMOKING OR EATING” in bold lettering not smaller than two inches tall, with additional language or symbols prohibiting entry to the regulated area by uncertified lead professionals. All signs shall be in a language that is easily recognized by all certified lead professionals and by members of the general public where the abatement activities are taking place.

(3) All movable items shall be moved 20 feet from working surfaces. Items that cannot be readily moved 20 feet from working surfaces shall be covered with 6-mil poly and sealed with duct tape.

(4) At least one layer of 6-mil, or thicker, poly shall be placed on the ground and shall extend at least 10 feet from the abated surface, plus another five feet out for each additional 10 feet in surface height over 20 feet. In addition, the poly shall meet the following criteria:

(A) Be securely attached to the side of the building, with cover provided to all ground plants and shrubs in the regulated area;

(B) be protected from tearing or perforating;

(C) contain any water, including rainfall, that may accumulate during the lead abatement; and

(D) be weighted down to prevent disruption by wind gusts.

(5) All windows in the regulated area and all windows below and within 20 feet of working surfaces shall be closed.

(6) Work shall cease if constant wind speeds are greater than 10 miles per hour.

(7) Work shall cease and cleanup shall occur if rain begins.

(8) All equipment used in the regulated area shall be thoroughly cleaned with a cleaning solu-

tion or vacuumed with a HEPA vacuum, or both, before removal from the regulated area.

(9) The regulated area shall be HEPA vacuumed and cleaned of lead-based paint chips, poly, and other debris generated by the abatement project work at the end of each workday. Debris shall be kept in a secured area until final disposal. (Authorized by and implementing L. 1999, Ch. 99, Sec. 4; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000.)

**28-72-18e. Work practice standards; postabatement clearance procedures.** Except as provided in K.S.A. 65-1-203, and amendments thereto, the following postabatement clearance procedures shall be performed only by a certified inspector or risk assessor:

(a) Following a lead abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces or visible amounts of dust, debris, or residue are still present. These conditions shall be eliminated before continuation of the clearance procedures.

(b) Following the visual inspection and any postabatement cleanup required by subsection (a), clearance sampling for lead-contaminated dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(c)(1) Dust samples for clearance purposes shall be taken using one or more of the documented methodologies in K.A.R. 28-72-13(d)(1).

(2) Dust samples for clearance purposes shall be taken a minimum of one hour after completion of final postabatement cleanup activities.

(d) The following postabatement activities shall be conducted as appropriate, based upon the extent or manner of lead abatement activities conducted in or to the residential dwelling or child-occupied facility:

(1) After conducting a lead abatement with containment between abated and unabated areas, one dust sample shall be taken from one window, if available, and one dust sample shall be taken from the floors of no fewer than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled.

(2) After conducting a lead abatement with no containment, two dust samples shall be taken

from no fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one window, if available, and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are fewer than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled.

(3) Following an exterior paint abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they shall be removed from the site and properly disposed of, according to all applicable federal, state, and local requirements.

(e) The rooms, hallways, or stairwells selected for sampling shall be selected according to one or more of the documented methodologies in K.A.R. 28-72-13(d)(1).

(f) The certified inspector or risk assessor shall compare the residual lead level, as determined by the laboratory analysis, from each dust sample with applicable clearance levels for lead in dust on floors and windows as established below in this subsection. If the residual lead levels in a dust sample exceed the clearance levels, all the components represented by the failed sample shall be recleaned and retested until clearance levels are met.

Following completion of a lead abatement activity, all dust, soil, and water samples shall comply with the following clearance levels:

(1) Dust samples:

Media	Clearance Level
Floors	40 µg/ft <sup>2</sup>
Interior windowsills	250 µg/ft <sup>2</sup>
Window troughs and exterior horizontal surfaces	400 µg/ft <sup>2</sup>

(2) Soil samples:

Bare soil (rest of yard)	1,200 ppm
Bare soil (small, high-contact areas, including sand boxes and gardens)	400 ppm

(3) Water 15 ppb or 15µg/L

(g) In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted if the following conditions are met:

(1) The certified individuals who abate or clean the residential dwelling do not know which residential dwelling will be selected for the random sample.

(2) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than five percent or 50 of the residential dwellings, whichever is smaller, in the randomly sampled population exceed the appropriate clearance levels.

(3) The randomly selected residential dwellings are sampled and evaluated for the clearance according to the procedures found in this regulation.

(h) A postabatement clearance report shall be prepared by a certified lead abatement supervisor or project designer. The postabatement clearance report shall include the following information:

(1) The start and completion dates of the lead abatement;

(2) the name and address of each licensed lead activity firm conducting the lead abatement and the name of each lead abatement supervisor assigned to the lead abatement project;

(3) the name, address, and signature of each certified risk assessor or lead inspector conducting clearance sampling and the date of clearance testing;

(4) the results of clearance testing and soil analysis, if applicable, and the name of each recognized laboratory that conducted the analysis;

(5) a detailed written description of the abatement, including the lead abatement methods used, locations of rooms or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures; and

(6) a written certification from the firm stating that all lead abatement activities have taken place in accordance with all applicable local, state, and federal laws and regulations.

(i) Time frame for submission of reports. The clearance report shall be provided to the owner of the property within 20 business days after completion of the clearance inspection. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202 and 65-1,203; effective,

T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-19. Work practice standards; collection and laboratory analysis of samples.** All paint chip, dust, and soil samples collected pursuant to the work practice standards contained in this article shall meet the following conditions:

(a) Be collected by persons certified by KDHE as a lead inspector or risk assessor; and

(b) be analyzed by a recognized laboratory. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-20. Work practice standards; composite dust sampling.** Composite dust sampling may be conducted only in situations specified in K.A.R. 28-72-14, K.A.R. 28-72-15, and K.A.R. 28-72-16. If this sampling is conducted, the following requirements shall apply:

(a) Composite dust samples shall consist of at least two subsamples.

(b) Every component that is being tested shall be included in the sampling.

(c) Composite dust samples shall not consist of subsamples from more than one type of component. (Authorized by and implementing L. 1999, Ch. 99, Sec. 4; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000.)

**28-72-21. Work practice standards; recordkeeping.** All reports or plans required in this article shall be maintained for no fewer than three years by the licensed lead activity firm or certified individual who prepared the report. (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002.)

**28-72-22. Enforcement.** (a) A notice of noncompliance (NON) may be issued by KDHE for any violation of the act or this article. A NON shall be the recommended response for a first-time violator of this article. Compliance assistance information shall be included in the NON to ensure future compliance with KDHE regulations.

(b)(1) The NON shall require the violator to take corrective action in order to comply with this article. The corrective action shall depend upon the specific violations. The NON may require that proof of action be submitted to KDHE by a date specified in the NON.



(2) Mitigating factors in cases in which a NON has been issued shall be documented in the case file. (Authorized by L. 1999, Ch. 99, Sec. 4; implementing L. 1999, Ch. 99, Secs. 4, 10, and 12; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000.)

**28-72-51. Definitions.** For purposes of this article, the definitions in K.A.R. 28-72-1, as well as the following definitions, shall apply:

(a) "Acknowledgment statement" means a form that is signed by the owner or tenant of housing confirming that the owner or tenant received a copy of the pamphlet and renovation notice before the renovation began.

(b) "Certificate of mailing" means a receipt from the postal service that provides evidence that the renovator mailed the pamphlet and a renovation notice to each owner or tenant. The pamphlet and renovation notice shall be mailed at least seven days before the start of renovation.

(c) "Certified inspector" is defined in K.A.R. 28-72-1.

(d) "Certified risk assessor" is defined in K.A.R. 28-72-1.

(e) "Common area" is defined in K.A.R. 28-72-1.

(f) "Compensation" means payment or goods received for services rendered. Payment may be in the form of money, goods, services, or bartering.

(g) "Component" is defined in K.A.R. 28-72-1.

(h) "Emergency renovation operations" means unplanned renovation activities performed in response to a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens property with significant damage. Emergency renovation operations shall include renovations to repair damage from a tree that fell on a house and renovations to repair a water pipe break in an apartment complex.

(i) "EPA" is defined in K.A.R. 28-72-1.

(j) "Housing for the elderly" means retirement or similar types of housing specifically reserved for households of one or more persons 62 years of age or older at the time the unit is first occupied.

(k) "Lead-based-paint-free housing" means target housing that has been determined by a certified inspector or certified risk assessor to be free of paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter or 0.5% by weight.

(l) "Lessee" means any entity that enters into an agreement to lease, rent, or sublease target housing, including the following:

- (1) Individuals;
- (2) partnerships;
- (3) corporations;
- (4) trusts;
- (5) government agencies;
- (6) housing agencies; and
- (7) nonprofit organizations.

(m) "Lessor" means any entity that offers target housing for lease, rent, or sublease, including the following:

- (1) Individuals;
- (2) partnerships;
- (3) corporations;
- (4) trusts;
- (5) government agencies;
- (6) housing agencies; and
- (7) nonprofit organizations.

(n) "Minor repair and maintenance" means activities including the following:

- (1) Performing minor electrical work that disturbs two feet or less of painted surface per component;
- (2) drilling holes in the wall to run an electrical line; or
- (3) replacing a light fixture.

(o) "Multifamily dwelling" is defined in K.A.R. 28-72-1.

(p) "Owner" means any person or entity that has legal title to housing, including the following:

- (1) Individuals;
- (2) partnerships;
- (3) corporations;
- (4) trusts;
- (5) government agencies;
- (6) housing agencies; and
- (7) nonprofit organizations.

(q) "Pamphlet" means the current EPA pamphlet, "protect your family from lead in your home," or the current EPA-approved pamphlet that was developed for the same purpose. This term shall include reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet, except for the addition or revision of state or local information.

(r) "Record of notification" means a written statement documenting the steps taken to provide pamphlets and renovation notices to tenants and owners in residential dwellings.

(s) "Renovation" means any modification of all or part of any existing structure in housing that

disturbs any painted surface, including the following:

- (1) Removal and modification of painted surfaces, components, or structures;
- (2) surface preparation activities; and
- (3) window replacement.

(t) "Renovation notice" means a notice of renovation activities to tenants and owners of residential dwellings. The notice shall describe the scope, location, and expected duration of the renovation activity.

(u) "Renovator" means a person who is receiving compensation for a renovation.

(v) "Self-certification of delivery" means an alternative method of documenting the delivery of the pamphlet and renovation notice to the tenant. This method may be used whenever the tenant is unavailable or unwilling to sign a confirmation of receipt of pamphlet.

(w) "Supplemental renovation notice" means any additional notification that is required when the scope, location, or duration of the project changes.

(x) "Target housing" is defined in K.A.R. 28-72-1.

(y) "Zero-bedroom dwelling" means any residential dwelling in which the living area is not separated from the sleeping area. This term shall include efficiency and studio apartments, dormitory housing, and military barracks. (Authorized by and implementing K.S.A. 1999 Supp. 65-1,202; effective June 23, 2000.)

**28-72-52. Applicability.** (a) Except as provided in subsection (b) of this regulation, article 72 shall apply to all renovation of target housing performed for compensation.

(b) This article shall not apply to renovation activities that are limited to any of the following:

(1) Minor repair and maintenance activities, including minor electrical work and plumbing, that disrupt two square feet or less of painted surface per component;

(2) emergency renovation operations; or

(3) if the renovator has obtained a copy of the determination, any renovation in target housing in which a written determination has been made by an inspector or risk assessor who has been certified in accordance with this article, that the components affected by the renovation are free of paint and other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or .5 percent by weight. (Authorized

by and implementing K.S.A. 1999 Supp. 65-1,202; effective June 23, 2000.)

**28-72-53. Information distribution requirements.** (a) Renovations in residential dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the renovator shall perform the following:

(1) Provide the owner of the unit with the pamphlet and renovation notice, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet and renovation notice; or

(B) obtain a certificate of mailing at least seven days before the renovation; and

(2) if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet and renovation notice, and comply with one of the following:

(A) Obtain from the adult occupant a written acknowledgment that the occupant has received the pamphlet and renovation notice, or certify in writing that the pamphlet and renovation notice has been delivered to the dwelling and that the renovator has been unsuccessful in obtaining a written acknowledgment from an adult occupant. This certification shall include the following:

(i) The address of the unit undergoing renovation;

(ii) the date and method of delivery of the pamphlet and renovation notice;

(iii) the names of persons delivering the pamphlet and renovation notice;

(iv) the reasons for lack of acknowledgment, including the occupant's refusal to sign and unavailability of adult occupants;

(v) the signature of the renovator; and

(vi) the date of signature; or

(B) obtain a certificate of mailing at least seven days before the renovation.

(b) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multifamily housing, the renovator shall perform the following:

(1) Provide the owner with the pamphlet and renovation notice, and comply with one of the following:

(A) Obtain from the owner, a written acknowledgment that the owner has received the pamphlet and renovation notice; or

(B) obtain a certificate of mailing at least seven days before the renovation;

(2) provide a pamphlet and a renovation notice to each unit of the multifamily housing before the start of renovation. This notification shall be accomplished by distributing written notice to each affected unit. The notice from the renovator shall describe the general nature and locations of the planned renovation activities and the expected starting and ending dates;

(3) if the scope, location, or expected starting and ending dates of planned renovation activities change after the initial notification, provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification shall be provided before the renovator initiates work beyond that which was described in the original notice.

(c) Written acknowledgment. Sample language for the written acknowledgments required in paragraphs (a)(1)(A), (a)(2)(A), and (b)(1)(A) of this regulation shall be provided by the KDHE upon request from the renovator. These acknowledgments shall be written in the same language as that in the text of the contract agreement for the renovation, or in the case of non-owner-occupied target housing, in the same language as that in the lease or rental agreement or the pamphlet, and shall include the following:

(1) A statement recording the owner or occupant's name and acknowledging receipt of the pamphlet and renovation notice before the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of the signature; and

(2) either a separate sheet or part of any written contract or service agreement for the renovation. (Authorized by and implementing K.S.A. 1999 Supp. 65-1,202; effective June 23, 2000.)

**28-72-54. Recordkeeping requirements.**

(a) Each renovator shall retain and, if requested, make available to KDHE all records necessary to demonstrate compliance with this article for a period of three years following completion of the renovation in target housing.

(b) Records shall be retained as specified in subsection (a) of this regulation, if applicable. These records shall include the following:

(1) Reports certifying that a determination had been made by an inspector who has been certified

in accordance with this article that lead-based paint is not present in the area affected by the renovation as described in K.A.R. 28-72-52 (b)(3);

(2) signed and dated acknowledgments of receipt as described in K.A.R. 28-72-53 (a)(1)(A), (a)(2)(A), and (b)(1)(A);

(3) certifications of attempted delivery as described in K.A.R. 28-72-53 (a)(2)(A);

(4) certificates of mailing as described in K.A.R. 28-72-53, (a)(1)(B), (a)(2)(B), and (b)(1)(B); and

(5) records of renovation notices to tenants and owners of residential dwellings as described in K.A.R. 28-72-54. (Authorized by and implementing K.S.A. 1999 Supp. 65-1,202; effective June 23, 2000.)

**Article 73.—ENVIRONMENTAL USE CONTROLS PROGRAM**

**28-73-1. Definitions.** (a) “Act” means K.S.A. 65-1,221 et seq. and amendments thereto.

(b) “Applicant” means the owner, as defined in K.S.A. 65-1,222 (c) and amendments thereto, of an eligible property who submits to the secretary an application for approval of environmental use controls for the eligible property.

(c) “Eligible property” means real property that exhibits environmental contamination exceeding department standards for unrestricted use and that is being or has been investigated or remediated, or both, as a result of participating in a department-approved program. For the purposes of these regulations, a “hazardous waste facility” as defined in K.S.A. 65-3430, and amendments thereto, shall not be considered to be an eligible property.

(d) “Environmental contamination” means “pollution” or “contamination,” as those terms are used in the following acts and statutes, as well as any regulations adopted under the authority of those statutes, unless this act or any of the following acts specifically exclude or exempt certain forms of pollution or contamination from the provisions of this act:

(1) K.S.A. 65-3452a through K.S.A. 65-3457a, and amendments thereto, concerning hazardous substances;

(2) the voluntary cleanup and property redevelopment act, K.S.A. 65-34,161 through K.S.A. 65-34,174, and amendments thereto;

(3) the Kansas drycleaner environmental re-

sponse act, K.S.A. 65-34,141 through K.S.A. 65-34,155, and amendments thereto;

(4) K.S.A. 65-3430 through K.S.A. 65-3447, and amendments thereto, concerning hazardous waste;

(5) K.S.A. 65-161 through K.S.A. 65-171y, and amendments thereto, concerning the waters of the state;

(6) the Kansas storage tank act, K.S.A. 65-34,100 through K.S.A. 65-34,130, and amendments thereto; and

(7) K.S.A. 65-3401 through K.S.A. 65-3427, and amendments thereto, concerning solid waste.

(e) “Environmental use control agreement” means a legal document specifically defining the environmental use controls and other related requirements for an eligible property according to K.A.R. 28-73-3. The agreement shall be issued by the secretary and shall be signed by the applicant. The signatures of the secretary and applicant shall be notarized, and as required by K.S.A. 65-1,225, and amendments thereto, the agreement shall be recorded by the register of deeds in the county where the eligible property is located.

(f) “Financial assurance” means any method of guaranteeing or ensuring adequate financial capability that is approved by the secretary as part of a long-term care agreement. One or more of the following methods of financial assurance may be required by the secretary as a part of a long-term care agreement:

- (1) An environmental insurance policy;
- (2) a financial guarantee;
- (3) a surety bond guaranteeing payment or performance or a similar performance bond;
- (4) an irrevocable letter of credit;
- (5) documentation of the applicant’s qualification as self-insurer; and

(6) other methods the secretary determines are adequate to ensure the protection of public health and safety and the environment.

Federal and state governmental entities that qualify as applicants under these regulations shall not be required to provide financial assurance.

(g) “Legal description” means identification of the land boundaries of an eligible property that is subject to an environmental use control agreement. The identification of land boundaries shall be provided by one or more of the following methods:

- (1) A definite and unequivocal identification of lines and boundaries that contains dimensions to enable the description to be plotted and retraced

and that describes the legal surveys by county and by at least one of the following additional identifiers:

- (A) Government lot;
- (B) aliquot parts; or
- (C) quarter section, section, township, and range;

(2) a metes and bounds legal survey commencing with a corner marked and established in the U.S. public land survey system; or

(3) the identifying number or other description of the subject lot, block, or subdivision if the land is located in a recorded subdivision or recorded addition to the subdivision.

(h) “Legal survey” means a boundary survey or land survey that is performed by a land surveyor licensed in the state of Kansas and that is conducted for both of the following purposes:

(1) Describing, documenting, and locating the boundary lines of an eligible property, a portion of an eligible property, or both; and

(2) plotting a parcel of land that includes the eligible property.

(i) “Long-term care agreement” means a legally binding document that is entered into as provided in K.A.R. 28-73-4 by an applicant and the secretary and that describes the responsibilities and financial obligations of the applicant to fund the department’s inspection and maintenance activities at a category 3 property, as described in K.S.A. 65-1,226, and amendments thereto.

(j) “Residual contamination” means environmental contamination remaining at a property that prohibits the unrestricted use of that property.

(k) “Unrestricted use” means that there are no limits or conditions placed on the use of a property, including use for residential purposes. (Authorized by K.S.A. 2004 Supp. 65-1,232; implementing K.S.A. 2004 Supp. 65-1,224 and 65-1,228; effective April 7, 2006.)

**28-73-2. Application.** (a) Each applicant shall submit an application to the secretary, as provided by the act and these regulations.

(b) If an application is determined by the secretary to be incomplete, written notification shall be provided to the applicant by the secretary identifying the documentation, data, or other information that is needed to complete the application, and the application shall be returned to the applicant. The applicant may then submit a revised application package, provide the additional infor-



mation as required by the secretary, or withdraw the application.

(c) If the applicant is a person or entity that does not own the eligible property, but is the landowner's authorized representative, the applicant shall provide a notarized statement from the landowner or landowners specifically authorizing the applicant to act on the landowner's behalf or a judicial decree assigning this authority to the applicant.

(d) If the owner of the eligible property is a local, state, or federal governmental entity, the signature of an authorized governmental official shall be considered as a sufficient basis for executing and submitting the application. (Authorized by K.S.A. 2004 Supp. 65-1,232; implementing K.S.A. 2004 Supp. 65-1,221, 65-1,222, and 65-1,224; effective April 7, 2006.)

**28-73-3. Environmental use control agreements.** (a) If the secretary approves an application for environmental use controls, an environmental use control agreement for the eligible property shall be issued by the secretary in a standardized format that contains all of the following components, as applicable to that eligible property:

(1) A description of the control, restriction, prohibition, or limitation that constitutes each of the environmental use controls proposed by the applicant in the application package and approved by the secretary;

(2) a legal description of the eligible property;

(3) authorization for the department and the department's contractors to have access to the eligible property as required by the act;

(4) a statement of the funding requirements established by the secretary as specified in the act or, for category 3 property, a reference incorporating the long-term care agreement required by K.S.A. 65-1,226 and amendments thereto and K.A.R. 28-73-4;

(5) for category 3 property, a statement indicating whether financial assurance is required, as specified in K.S.A. 65-1,224, and amendments thereto, K.A.R. 28-73-1, and K.A.R. 28-73-5;

(6) the length of time during which the environmental use control agreement is to be in effect;

(7) a description of any monitoring, inspection, or maintenance requirements;

(8) a description of the specific terms and conditions that are to be applied as part of the environmental use controls for the eligible property;

(9) a description of the enforcement provisions that are authorized by K.S.A. 65-1,229, and amendments thereto;

(10) a list of any local, state, or federal government restrictions, prohibitions, or zoning requirements that pertain to the eligible property;

(11) an acknowledgment of the environmental use control agreement that is to be endorsed with the seal of the register of deeds in and for the county where the eligible property is located, pursuant to K.S.A. 19-1206, and amendments thereto; and

(12) a description of any other requirements established for the eligible property by the secretary to ensure the protection of public health and safety and the environment.

(b) Upon approval of an application, the following documents shall be sent to the applicant by the secretary:

(1) A letter approving the application; and

(2) the environmental use control agreement with the notarized signature of the secretary.

(c) In order for the environmental use control agreement to be effective, upon receipt of the agreement the applicant shall return to the secretary the environmental use control agreement with the notarized signature of the applicant and the seal of the register of deeds indicating that the agreement has been recorded as required by K.S.A. 65-1,225, and amendments thereto. The applicant shall submit with the agreement any payment necessary to fulfill the funding requirements established by the environmental use control agreement.

(d) The recorded copy of the environmental use control agreement shall be tracked by the department as specified in K.S.A. 65-1,230, and amendments thereto. (Authorized by K.S.A. 2004 Supp. 65-1,232; implementing K.S.A. 2004 Supp. 65-1,224, 65-1,225, 65-1,226, and 65-1,228; effective April 7, 2006.)

**28-73-4. Long-term care agreements for category 3 property.** (a) As provided in K.S.A. 65-1,226, and amendments thereto, a long-term care agreement between the secretary and the applicant shall be required for each category 3 property.

(b) Each long-term care agreement for a category 3 property entered into by an applicant and the secretary as provided by K.S.A. 65-1,226, and amendments thereto, shall include a provision for a funding requirement in an amount that will re-

imburse the department for all direct and indirect costs incurred by the department in implementing and administering the environmental use control agreement and performing long-term care at the property, including costs for the following departmental activities conducted for the purpose of inspecting, monitoring, investigating, and evaluating environmental use controls and remedial progress at the property:

(1) Reviewing documents related to the site, including the following:

(A) Inspection, monitoring, and progress reports;

(B) operation and maintenance records;

(C) reports related to spills of contaminants at the site;

(D) reports related to permits issued for the eligible property; and

(E) pertinent historical documents;

(2) monitoring and inspecting remediation activities and monitoring wells, protective structures, remedial systems, and any other features directly related to or associated with an environmental use control on the eligible property;

(3) searching and reviewing records and files related to the eligible property, including historical files, county tax records, county property records, and zoning records;

(4) collecting environmental samples, including quality assurance and quality control samples; and

(5) performing laboratory analyses on environmental samples collected to monitor and evaluate remedial progress at the eligible property.

(c) (1) If the applicant is required to provide financial assurance for a category 3 property, the long-term care agreement shall identify the initial amount of financial assurance required and one or more of the financial assurance methods established by the secretary in accordance with K.A.R. 28-73-5, which the applicant shall maintain for the period of time the long-term care agreement is in effect.

(2) The long-term care agreement shall state that, as the amount of the financial assurance or the financial assurance method is revised in subsequent years as provided in K.A.R. 28-73-5, the most recent revised amount or method approved by the secretary shall be deemed to be incorporated into the long-term care agreement and shall supercede any prior amount or method.

(d) The long-term care agreement shall clearly define the requirements that apply to the secre-

tary and the applicant and their respective responsibilities. (Authorized by K.S.A. 2004 Supp. 65-1,232; implementing K.S.A. 2004 Supp. 65-1,224, 65-1,226, and 65-1,230; effective April 7, 2006.)

**28-73-5. Financial assurance.** (a) Any applicant requesting approval of an environmental use control for a category 3 property may be required by the secretary to provide and maintain financial assurance in an amount equal to or greater than one or both of the following:

(1) The estimated amount of the funding requirement set out in the long-term care agreement as provided by K.A.R. 28-73-4; and

(2) the estimated amount of the funding necessary to implement contingent remedies that will be used to protect public health and safety and the environment if the proposed remedial activity fails.

(b) Each applicant required by the secretary to provide and maintain financial assurance shall submit a detailed written estimate to the secretary, in current dollars, of the estimated amount of financial assurance required as specified in subsection (a) and shall propose one or more methods of financial assurance. The written estimate and the proposed method or methods of financial assurance shall be reviewed by the secretary and either approved or, if the secretary determines that either the written estimate or the proposed financial assurance method is inadequate, disapproved. If the secretary disapproves the written estimate or the proposed financial assurance method, or both, a written notice shall be provided by the secretary to the applicant explaining the basis for the disapproval. The applicant may correct the identified inadequacies and submit a revised written estimate and proposed financial assurance method to the secretary for further review.

(c) Once approved by the secretary, the initial amount and method of financial assurance shall be documented in the long-term care agreement for the eligible property.

(d) Each applicant required to provide and maintain financial assurance shall submit proof of the initial, approved financial assurance to the secretary before the environmental use control agreement is issued.

(e) On or before March 31 of each calendar year, each owner, as defined by the act, who entered into a long-term care agreement that estab-

lishes a financial assurance requirement shall submit to the secretary a revised written estimate, in current dollars, of the amount of financial assurance required in subsection (a).

(f) The revised written estimate shall be reviewed by the secretary. Written notice that the revised written estimate has been approved or that additional adjustments are required to the revised written estimate or method of financial assurance shall be provided by the secretary. Adjustments to the amount of the required financial assurance or the financial assurance method, or both, may be required for any of the following reasons:

(1) Changes in the estimated costs of the funding requirement for the eligible property as specified in paragraph (a)(1);

(2) changes in the estimated costs of implementing contingent remedies that will be used to protect public health and safety and the environment if the proposed remedial activity fails as specified in paragraph (a)(2);

(3) changes in the risks to public health and safety and the environment posed by a potential release from the eligible property;

(4) documented changes in the financial viability of an owner or the provider of a financial assurance method; or

(5) changes in estimated costs based on inflation.

(g) Each owner required by the secretary to maintain financial assurance shall submit an updated proof of financial assurance within 45 days of receipt of the secretary's written notice in subsection (f). The proof shall be based on the approved amount and method of financial assurance described in the notice.

(h) Each applicant who enters into an environmental use control agreement for a category 3 property that includes a financial assurance requirement shall comply with the following conditions:

(1) Provide and continuously maintain financial assurance in an amount equal to or greater than the latest approved written cost estimate throughout the period the environmental use control agreement is in effect; and

(2) comply with the provisions of the document titled, "procedure for demonstrating financial assurance at property with environmental use controls" as published by the department on August 31, 2005, and hereby adopted by reference. (Authorized by K.S.A. 2004 Supp. 65-1,232; implementing K.S.A. 2004 Supp. 65-1,224 and 65-1,226; effective April 7, 2006.)

menting K.S.A. 2004 Supp. 65-1,224 and 65-1,226; effective April 7, 2006.)

**28-73-6. Duration of environmental use controls.** (a) Each environmental use control shall remain in effect in perpetuity, unless the secretary approves, in writing, the removal of an environmental use control or, by its own terms, the environmental use control agreement expires.

(b) Any applicant may submit with the application a written request for approval of a provision in the environmental use control agreement specifying the number of years the environmental use control is to remain in effect. The request shall be reviewed by the secretary, and the applicant shall be notified by the secretary of the secretary's approval or denial of the request.

(c) If an approved environmental use control agreement will expire after a stated term of years or the owner seeks to terminate an environmental use control agreement, the owner shall submit a detailed work plan to the secretary that outlines the proposed methods of sampling and evaluating the residual contaminant levels on the eligible property. The owner shall submit the work plan before the expiration or termination of the environmental use control agreement. After consideration and approval of the work plan by the secretary, all of the following shall occur:

(1) The owner shall execute the approved work plan.

(2) The owner shall document and submit the results of the sampling to the secretary in a report and include recommendations for future actions to protect public health and safety and the environment at the eligible property.

(3) Following the secretary's review of the report and recommendations for future actions, the report and recommendations shall be approved, approved with conditions, or disapproved by the secretary. (Authorized by K.S.A. 2004 Supp. 65-1,232; implementing K.S.A. 2004 Supp. 65-1,227; effective April 7, 2006.)

**28-73-7. Restrictions, prohibitions, and zoning requirements.** (a) Restrictions, prohibitions, and zoning requirements placed on an eligible property by a local, state, or federal government may be approved by the secretary in lieu of or in addition to one or more environmental use controls if the restriction, prohibition, or zoning requirement meets the following conditions:

(1) Has been legally established;

(2) is enforceable by a governmental entity; and

(3) is determined by the secretary to be in effect and applicable to the environmental contamination for which a particular environmental use control is otherwise considered to be a necessary component of an environmental use control agreement for the eligible property.

(b) Use of these restrictions, prohibitions, or zoning requirements in lieu of or in addition to an environmental use control may be considered in either of the following cases:

(1) For contamination that is contained exclusively within the boundaries of an eligible property; or

(2) for contamination that is both contained within and extends beyond the boundaries of an eligible property if the local, state, or federal governmental restriction, prohibition, or zoning requirement is in effect and applies to all of the following areas:

(A) All of those contaminated areas that are beyond the boundary of the eligible property; and

(B) All of those areas surrounding or extending beyond the contaminated areas for a distance that is determined by the secretary to be necessary to ensure the protection of public health and safety and the environment.

(c) Each applicant submitting an application for an environmental use control agreement shall submit to the secretary a copy of any existing local, state, or federal governmental restrictions, prohibitions, or zoning requirements that are proposed for inclusion in the environmental use control agreement in lieu of or in addition to one or more of the proposed environmental use controls. Each applicant shall submit for the secretary's review documentation sufficient to demonstrate the applicant's compliance with each restriction, pro-

hibition, or zoning requirement that is enforceable by a local, state, or federal governmental entity.

(d) If the secretary approves the inclusion of governmental restrictions, prohibitions, or zoning requirements in the environmental use control agreement, the agreement shall reference the appropriate local, state, or federal restriction, prohibition, or zoning requirement and shall identify the governmental unit establishing these requirements.

(e) Each owner who enters into an environmental use control agreement that incorporates local, state, or federal governmental restrictions, prohibitions, or zoning requirements in lieu of or in addition to one or more environmental use controls shall remain subject to all other applicable requirements of the act and these regulations.

(f) An environmental use control agreement that incorporates local, state, or federal governmental restrictions, prohibitions, or zoning requirements shall be considered not to be effectively implemented and shall be subject to appropriate enforcement action in accordance with K.S.A. 65-1,229, and amendments thereto, if the secretary determines that both of the following conditions exist:

(1) The local, state, or federal governmental restrictions, prohibitions, or zoning requirements have been modified by the governmental entity after the environmental use control agreement was approved by the secretary.

(2) These modifications reduce the effectiveness of the environmental use control agreement to the extent that public health and safety and the environment are not protected adequately. (Authorized by K.S.A. 2005 Supp. 65-1,232; implementing K.S.A. 2005 Supp. 65-1,228; effective April 7, 2006.)